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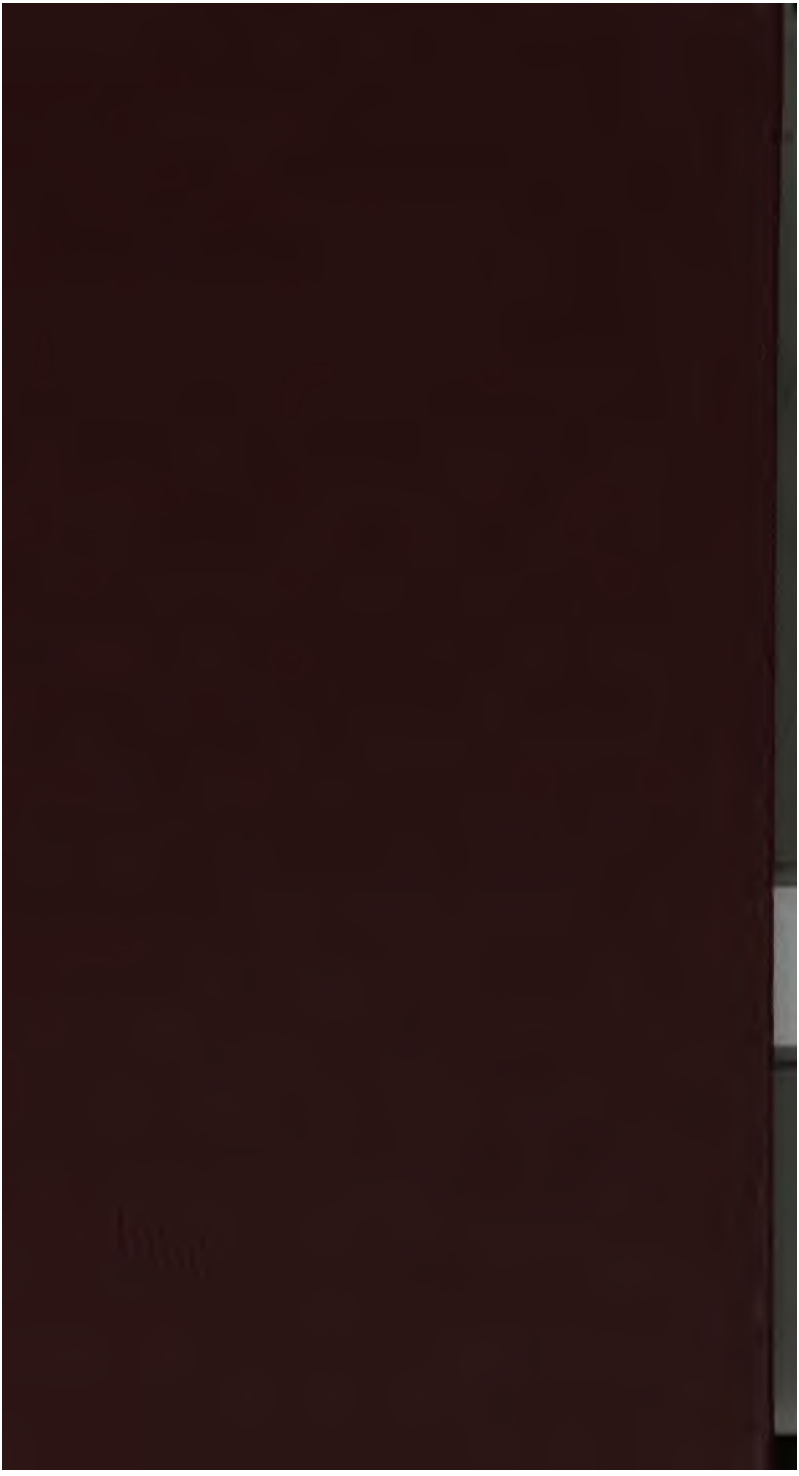

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THE AMERICAN LAKES,

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THE INDIANS

OF THE

NORTH-WEST TERRITORY,

IN 1830:

DISCLOSING THE CHARACTER AND PROSPECTS OF THE INDIAN RACE.

BY C. COLTON.

IN TWO VOLUMES.

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CHAPTER I.

ORIGIN OF THE AMERICAN INDIANS.

I HAVE tried hard to be made wise on this question, and am obliged to confess, that I know not a more convenient way of disposing of it, than a hint given by Elias Boudinot, Esq. of New Jersey, America, the first president of the American Bible Society, in his "Star in the West," a book devoted exclusively to this topic. The religious world will not have forgotten the Rev. Dr. Buchanan's "Star in the East," and its many interesting disclosures. The Honourable Mr. Boudinot, after having wrapped himself in the vision of Esdras, as narrated in

his second book, chapter thirteenth, imagines, that he has discovered a *Star in the West.*

"And it came to pass," says Esdras, "after seven days, I dreamed a dream by night." If any of the expounders of apocryphal records can interpret this dream from the 1st verse to the 39th of the chapter inclusive, I shall certainly be thankful, even though it comes too late to help me out of the present difficulty; and so also from the 46th verse to the end. From the 40th verse to the 45th inclusive, if the meaning be not self-evident, as a fragment of the interpretation of the vision, we are given to understand by the author of the "Star in the West," that it is to be regarded, as a grave historical account of the migration of the ten tribes of Israel, from the regions into which they were carried captive by Salmanazer, king of Assyria, to the straits of Kamskatka, (Euphrates in the text, by a figure) across which, "the flood being held still," or frozen over, they passed to the American continent. It is assumed, that this distant migration of this people into unknown regions, was a known fact, in the time of Esdras; and that this fragment of the interpretation is merely an application of the vision to the fact, so far as known, and an extension of its historical traces, under the guidance of common

report;—so that the credit claimed is only what may be considered as fairly due to the common records of the time. Not, that *all* the children of the captives of Israel left those regions and crossed to America; for the Tartars claim to have descended from these ancient Hebrews, and Tamerlane is said to have boasted, that he belonged to the tribe of Dan. But it is understood, that a large emigration went that way, embarked from the coast, and were thenceforth separated from their brethren behind.

"Those are the ten tribes," says the text of Esdras, verses 40—45, "who were carried away prisoners out of their own land, in the time of Osea the king, whom Salmanazer, the king of Assyria, led away captive, and he carried them over the waters, and so came they into another land. But they took this counsel among themselves, that they would leave the multitude of the heathen, and go forth into a *further country, where never mankind dwelt;* that they might there keep their statutes, which they never kept in their own land. And they entered into Euphrates, by the narrow passages of the river." That is, they embarked on the straits, which separated the two continents. "For the Most High then shewed signs for them, and held still the flood, till they were passed over." This miracle

is characteristic of Esdras, who dresses up all his facts in a similar garb. It is sufficient to understand, that they crossed in a way most convenient, on ice, or by navigation. And besides, as those are asserted to be volcanic regions, the two continents at that time might have approached much nearer than at present. "For through that country there was a great way to go, namely, of a year and a half." The journey we know to be long, and the historian had his own reasons for specifying a time between the taking up of the march and of the embarkation — reasons, founded on report, or conjecture.

Thus far the theory of the author of the "Star in the West," who (accidentally, as he says, and) very luckily hit upon this vision of Esdras, as a hint and a guide. He dissents from Sir William Jones, that the *Affghans* are the ten tribes; and thinks, that Sir William himself has either proved, or allowed them to be of the tribe of Benjamin.

The author under review has this advantage: that, as nobody can prove the negative of his proposition, unless physical impossibilities can be interposed, all the probabilities he can muster are so much evidence. And clearly, there is no impossibility. The way being open, then, for

the possible, and not improbable emigration of certain portions of the ten tribes, and perhaps the great body of them, from those regions, in which they were planted by Salmanazer, into the American continent, it is proper to attend to the evidence, which the American Aborigines themselves exhibit of such an origin.

The substance and shape of Mr. Boudinot's theory, it will be understood, is this: First, that according to the sacred record, (2 Kings xvii.) the king of Assyria, having found treason in Hoshea, king of Israel, whom he had previously reduced and made tributary, in the ninth year of Hoshea's reign, came again upon Samaria, and made a sweeping and clean work, and carried the entire people "away into Assyria, and placed them in Halah, and in Habor, by the river of Gozan, and in the cities of the Medes." And instead of the children of Israel, the king of Assyria brought men from Babylon, and from Cuthah, and from Ava, and from Hamath, and from Sepharvaim, and placed them in the cities of Samaria. And they possessed Samaria, and dwelt in the cities thereof. Thus the Lord was very angry with Israel, and removed them *out of his sight. There was none left but the tribe of Judah,*" it being understood, that Judah comprehended Benjamin in common parlance. "So was Israel

carried away out of their own land to Assyria, *unto this day*," from henceforth. They have never returned.

But, next, what has become of them? It is supposed they remained among the heathen of those regions for ages, perhaps for centuries, separate and distinct, as all the children of Abraham have ever kept themselves, subject however to inconvenient and painful vicissitudes. In the successive changes of the government of those countries, themselves were liable to, and no doubt received, a various treatment. As a distinct people they maintained their own policy, as far as possible, even in captivity, and always had their own peculiar sympathies. They migrated probably from time to time, by compulsion, or at their own will by permission. It is supposed, they pushed on to the north-east, leaving some fractions of their own community in their track, as was quite natural, and thus accounting for the mixture of Hebrew blood with the Tartarian tribes, if we must accord any validity to the traditions, which assert it. Restive, and ever annoyed by their political relations and circumstances, "finding no rest for the sole of their foot," they still pushed on, hoping to better their condition, and meeting with no encouragement to turn back upon regions occupied by their

oppressors—until they came to the seas, which separate the two great continents. At what period previous to the introduction of the Christian era, they arrived on these coasts, whether it was one, two, or five hundred years, is of course all a matter of conjecture. They vacated their own cities and their own land, as is settled, in the ninth year of Hoshea, or Osea, more than seven hundred years before Christ. Two or three centuries, four or five in the extreme, may be supposed enough to have brought them, in their migratory enterprises, to this place. And certainly there is nothing shocking to probability, in allowing to these conjectures, suggested and shaped as they are by actual historical events, somewhat of the character of sober reality. It is easy to imagine, that the necessities, arising out of the inconveniences and annoyances, which these tribes constantly experienced in their captivity, would urge them on through any opening before them, as the revolutions and dispositions of the state of society, into which they were cast from time to time, should permit, or enforce. They were doomed to change and to migration by the decree of heaven—and that decree doubtless received its fulfilment, not by a train of miraculous events, but by the natural mutations of those conditions of society, into which they were

thrown. They were not cordially entertained any where. They could not easily amalgamate and merge themselves in other nations. Perpetual, everlasting discomfort pushed and rolled them onward, and onward still, until, as Esdras says — if we may presume to quote his record, found in company with such a dream, and being itself in part the professed interpretation of the dream: "They took this counsel among themselves, that they would leave the multitude of the heathen, and go forth into a further country, where never mankind dwelt, that they might there keep their statutes, which," says the writer, apparently with great shrewdness and irony, "they *never* kept in their own land;" as if they were likely to do better, than they had done at home. The sentiment of compunction for past offences, however, and the purpose of reformation under all their sufferings, which they well understood had been brought upon them by their sins, were not unnatural; although the probabilities of accomplishing what they professed to have in view, considering the moral degenerations through which they had passed and their loss of the stated ordinances of Jehovah for so many ages, were exceedingly faint.

This record of Esdras, it is supposed, may have had a foundation in substantial and veracious

history. The ten tribes did actually go that way until they disappeared, from the best authenticated accounts. And the credit of Divine prophecy makes it necessary, that they should still be in existence. There are so many probabilities, suggested by fact and the most natural course of contingent events, supporting this apocryphal allusion, and imparting to it so much of the garb and mien of a current history, that we may suppose it ought not at once and without reflection to be disregarded.

Suppose, then, that the main body of the ten tribes did cross from the Asiatic to the American continent, as here indicated. If I do not mistake, it has even been gravely suggested by geologists, that these continents once formed a territorial junction in that quarter—at least, it is more than probable from tradition and known phenomena, that there have been extensive submersions of territory, the former existence of which, by this hypothesis, would have made the passage much easier, than at present. And on the same supposition, it is not incredible, that the higher latitudes in the depths of winter would have laid a continuous and firm bridge of ice from continent to continent, so that, as Esdras represents, "the flood was held still." But, bating even all the advantages of these

hypothetical arrangements, and allowing the opposite coasts of the two continents, and the islands between them, to have stood up in their present shapes, it is by no means impossible, that the tribes should have gone over.

All impossibilities then out of the way, and so many probabilities only on one side, facing the question, let us see what proofs of such an origin may be found in the known history of the American Aborigines.

In the first place, the traditions of the Aborigines in regions of North America, quite remote from each other, and of tribes which must necessarily have been for a long time without intercourse, distinctly recognize the fact, that their ancestors formerly crossed a *great river* in the north-west, and came down and spread themselves over the territories, which they now occupy. The character of this tradition, and the confidence with which it is cherished and handed down from generation to generation, along with the consideration of the channels, through which it has passed, so long independent of each other, has been regarded as worthy of great respect. In some instances, it is asserted by them, that *nine* parts of *ten* (the ten tribes) of their ancestors, who as a people were *one*, came over the *great river*. Admitting the

validity of this tradition, and the correctness of the general theory, it would seem, that *one* of the ten tribes declined the enterprize, and remained upon the Asiatic continent. The offer of Christianity and of the Bible to the Indians of North America, with an account of its origin and claims, has, in several instances quite remote from and independent of each other, met this remarkable reception: "This book once belonged to our ancestors!" And along with this recognition, they have traditions, that the Great Spirit used to foretell to their fathers future events; that he controlled nature in their favour; that angels once talked with them; that all the Indian tribes descended from *one* man, who had *twelve* sons; that this man was a notable and renowned prince, having dominion over all the earth; and that the Indians, his posterity, will yet recover the same dominion and influence. They believe by tradition, that the spirit of prophecy and of miraculous interposition, once enjoyed by their ancestors, will yet be restored to them, and that they shall recover *the book*—all of which have been so long lost. Their traditions distinctly recognize the deluge in different forms, some of which assert it to have been partial, and some universal. They speak of a remnant saved from the deluge in a great canoe; others that

eight men were first made by the Great Spirit; and that all nations and all colours sprung from them. They recognize the building of Babel, the confusion of tongues, and the dispersion. They assert, that their ancestors once practised circumcision, and that their young men ridiculed them out of it. Some say, that the first woman came from heaven, had twins, and that the elder killed the younger;—others, that the Great Spirit first made two Indians (men) out of the earth, and not answering his purpose, he took a rib from each, and made for him a wife. Since they have seen the white man, they say, the Great Spirit made him of the *finer* dust, that is, of better materials. They say, that their ancestors carried a magic and sacred *rod*, in their migrations, which was given them by the Great Spirit, and which they always planted in the earth, where they stopped, until it budded in a night, as the signs for them to settle down and take up their abode. These traditions, of course, are not universal, neither do they always exist in the same form in tribes very remote from each other. They are however well authenticated.

The *religion* of the aboriginal Americans is not to be overlooked. Polytheism has been reported of the Indians of North America in a very few instances. I am inclined, however,

to doubt the fact. "You offer us *one* God," an Indian of Massachusetts is represented to have said to the Elliot and Mayhew school of Missionaries. "Do you think I would exchange *thirty* for *one?*" I think, however, without denying facts of this kind, that they are to be viewed, as proceeding from that levity of infidelity respecting all religions, which so extensively prevails in every community, rather than to be quoted as proofs of polytheism. It is allowed to be a general truth, that the Indians of North America are neither polytheists, nor idolaters. Every where they are found to recognize the existence, and religiously to adore the supposed and infinite attributes of one Supreme, though invisible Being, whom they call, the *Great Spirit.* Generally also they recognize the existence of one potent evil Spirit and evil Angels. They universally believe in a future state, in future rewards and punishments, of which their notions are more or less gross, as might be expected, from the character of their uncultivated minds. Their ideas of God, however, are remarkably pure, inspiring veneration and awe, and generally not unworthy to be entertained by the Christian. Here the Christian and the Indian seem to meet on common ground: they worship *One* invisible, all-pervading,

all-powerful, and all-perfect Spirit. They have no symbols of idolatry, existing, or among their antiquities—no image of any thing in the heavens above, or in the earth beneath, which they hold in religious regard, or as the representative of invisible and spiritual agencies. This grand fact is certainly a remarkable one. Neither can it be ascribed to their ignorance, to their want of ingenuity, or to their stupidity. All other nations and all other tribes, not Christian, or allied to Christians, are perhaps without an exception idolaters. And the more ignorant and the more debased, the more powerful is the dominion of their various religions, and of their adopted deities—and the more gross and sensual and revolting are the forms, under which their gods are worshipped.

But, it is said, if this exemption of the American Aborigines from idolatry prove any thing to the purpose, for which it seems to be adduced, it proves too much. For the Hebrews would be idolaters in their own land—this was their ever besetting sin. Much more would they be idolaters among the heathen, unprotected and exposed;—much more, when reduced to ignorance and barbarism, and deprived of all their former and public sacerdotal ministrations.

But observe: the *Jews*, or the descendants of Judah and Benjamin, are never idolaters in captivity, or in their wanderings. They know, and remember, and constantly feel, that they have been driven away from their own land for this sin. And so long as they are admonished by their own monumental dispersions, so disastrous and painful — so long as they look upon themselves and their condition, and remember what their fathers were, they are not likely to be tempted to idolatry. The fact is, they are not idolaters—and that is enough. And the reason, of a moral character, is sufficiently obvious.

Exactly the same reasons, or a combination of the same influences, would for ever bar the idolatry of the ten tribes, wherever they might wander. Whatever else they might forget of their own history, they could not soon forget, that they had been punished by heaven for abandoning the God of heaven. They could not forget their misfortunes, constantly pressing upon them by an aggravated and aggravating doom. And so long as they had sensibility enough to feel their woes, they would feel more poignantly the capital reason, for which they had been inflicted. The last relic, that would be jostled from their traditional history to give

place to fiction, would be the fact, that as a people they are pursued by the judgments of heaven for a former abandonment of the only living and true God. It is morally impossible they should become idolaters, so long as they exist away from the land of their fathers, because it is morally impossible they should ever forget, that this is the reason of their banishment. Even when reduced so low and become so debased and brutish, as not to be able themselves to define the reason, the infliction of the stroke of their chastisement is written so deep and so indelibly on their hearts, that it cannot be effaced. Hence, if the moral philosophy of human kind halts at the spectacle of aboriginal Americans in this particular, as we think it must, the reason turns up, and the mysterious exception is solved. Admitting, that they are the children of Abraham, they should not, they could not be idolaters.

That the ten tribes should have degenerated so much more than the Jews,* is obvious. From the time of the revolt of the ten tribes and the dissolution of the empire under Rehoboam, and

* The Jews are Hebrews and so are the ten tribes. But the latter are not Jews—this name being appropriated to designate the descendants of the two tribes, incorporated under the kingdom of Judah.

the assumption of the sceptre of Israel by Jeroboam, until their final captivity, a period of two centuries and a half nearly, they were the subjects of many political, social, and religious disadvantages. They deteriorated rapidly, while the kingdom of Judah, established at Jerusalem, enjoying the superior privileges of the temple worship, and of that magnificent metropolis, maintained substantially that high degree of civilization and refinement, to which they had been raised under the administrations of David and Solomon. And besides, the throne of Judah was filled by a succession of kings for more than a hundred years after the kingdom of Israel was totally annihilated. In addition to this, Judah was reduced by the king of Babylon, and carried captive, and planted in the heart of the greatest empire and of the most refined people of the world. The Jews were afterwards restored, and rebuilt their city, and flourished again in their own land, till after the Crucifixion. And since the destruction of Jerusalem by the Romans, the dispersion and wanderings of the Jews have been for the most part among the most civilized nations. Whereas the ten tribes went directly into the regions of comparative barbarism, themselves greatly degenerate, when they were carried away. Depressed and maltreated, they could

not rise, but would naturally sink lower and lower. Every century and every age may reasonably be supposed to have been to them an age and a century of a retrograde march, in regard to civilization. Wandering among barbarous nations, themselves became barbarous. But though civilization is lost, when a people are broken up, and commence a migratory existence, religion and its rites in some form will always be retained. Man is naturally a religious being; and his dispositions being depraved, he is always inclined to corrupt the true religion, or to adopt a false one. The ten tribes, as is well known, had greatly corrupted their religion, before their dispersion. The sum of its imposing and solemn rites they could never maintain in their captivity, even while at rest; and generally among the heathen they would not be permitted to do it. Much less could they maintain them in a wandering state. But certain things they could and would naturally retain.

Suppose, then, that the wandering and hunting tribes of North America are in fact a portion, or the main body of the lost tribes of Israel, deteriorated into barbarism by a long and painful succession of calamitous vicissitudes. What rite, or rites of their ancient religion would they be most likely to retain? Obviously the sacrifice of

the lamb, and of other victims found in pastoral life—the bleeding and the smoking altar would be the last religious ceremony to be abandoned. But as their wandering life, on the present assumed hypothesis of their origin, has obliged them to leave their flocks and herds for ever behind, they must have a substitute. And what would be the natural and most convenient substitute for the hunter?—The answer is at once anticipated. Every finger is pointed to the *dog*, the only and the cherished domestic brute of the American Indian. The dog is the Indian's bullock, and heifer, and goat, and lamb. And so far as we have been able to learn, there has never been found a tribe of Indians in North America to this day, who, in their wild condition, are not accustomed statedly to make a most solemn and most religious solemnity in the bloody and burning sacrifice of this animal.

The lamb, offered to make atonement for sin, was required by Moses to be "without spot and without blemish." Although the Indians offer dogs, which are not white, yet the victims must have been well fed and the choicest. But on certain occasions, altogether the most solemn, supposed to be the times of burnt-offering for atonement, the victim must not only be white, but a single coloured hair, or a blemish of any

sort, would be sufficient to condemn it! Whence these religious and indomitable scruples? And all around the fire, while its blaze consumes the offering, and sends up to heaven the smoke of its incense, they sing and dance, and run the circle, crying with one united and simultaneous voice, ee-ee-oo-oo-yeh-yeh-wah-wah. And then with one utterance of each syllable: ee-oo-yeh-wah. Also: yah-ho-he-wah, with a most powerful aspirate, when that element comes in. And who does not see in these examples the Hebrew sacred name: *Je-ho-vah?* They have also the Hebrew *A-loh-heem* in substantial forms, applicable to the Great Spirit. In this dance their feet keep time with the deliberate enunciation of each syllable, making a solemn pause between. Nearly the exact forms of the original combination of the alphabetic elements of the Hebrew names of God, may be distinctly recognized in the religious solemnities of very many of the American tribes. In their sacred songs *Hal-le-lu-yah* is often heard as perfectly as in any Christian choir.

The American Indians have their feasts of the first-fruits, of the harvest, the hunter's-feast—all religious solemnities. They have the daily sacrifice, often done to be sure in a very simple and cheap way, viz. that the woman, when she cooks her meat, will cut off and throw a piece of the

fat into the fire very religiously, and watch the sudden flames of the incense with devout attention, until the offering is consumed, and the blaze expires. Or whatever be the nature of the food, a tithe of it is in some form devoted to a religious use—the burnt-offering being the favourite and most convenient mode. Although I am not aware, that they have a regular priesthood, yet something tantamount to this office always devolves on particular individuals for the occasion. It will be seen on the present hypothesis, that the regular line of the priesthood being once lost, or extinct, the descendants of Hebrews would not easily consent to the obtrusion of a profane lineage into these sacred functions. The office of a prophet being always extraordinary, under a special call from heaven, the history of the American Aborigines furnishes, even to this day, many remarkable instances. Never did Elijah, or Elisha, or any of the prophets of Israel, or of Judah, receive more veneration, or wield a mightier influence, than the Indian prophets of America, when once they are duly accredited. They are admitted to decide even the most momentous questions of peace and war, and supersede all other authorities—the exact type of the original office of a prophet among the Hebrews. The most bloody Indian wars of

America, among themselves, and against the whites, have been instigated under the influence of prophetic decisions and mandates. The late war of 1831, on the borders of the Upper Mississippi, was controlled by this influence; and it was not until the prophet was made prisoner, that the affair could be terminated.* A sacred vessel, of the nature and design of the *ark of the covenant*, has been known to be employed for similar purposes, and in the use of like ceremonies, by several tribes—and regarded with the most religious veneration. Whatever things are dearest to them on earth and the means of their enjoyment here, are made the symbols of their heaven beyond the grave, and that state is destined in their creed to be the reward of a virtuous life; and whatever things are the means of discomfort and misery here, shadow out the future retributions of the wicked. They are universally and firm believers in the immortality of the soul. Conjugal, parental, filial, and all domestic virtues—or rather the few of the last class,

* The American Indians, it is well known, retain the custom and assert the right of the ancient Hebrews, to the very iota, for the private avengement of private injuries: "An eye for an eye, and a tooth for tooth"—and blood for blood. The nearest of kin is always expected to avenge the death of his relative. There is no penal statute of a civilized code of higher authority, or more sure to find its victims, than this.

which are most necessary in their simple modes of life, are generally regarded of sacred and religious obligation. That many of their moral and social habits should be a violation of the minute specifications of the Mosaic code, is not strange, even admitting that they are Hebrews. Having lost their priesthood, with all their original and public forms of religion, and their sacred books, and every form of literature—having been doomed for so many centuries to a migratory existence, under the most disadvantageous and disastrous circumstances, not only without a chance of improvement, but all influences, physical, social, and moral tending to deteriorate and degrade them, it is not wonderful, that they have sunk to some of the lowest conditions of barbarism; it was only possible, it was natural, that they should retain some few of the most striking and most prominent features of their religion. And that certainly they have retained. And I do not doubt, if I were better qualified, that evidence of this sort, might be still farther accumulated.

But the *affinities of the American languages to the Hebrew tongue* constitute another class of evidence, not easily disposed of, independent of the supposition, that those tribes are of the same original stock.

First the *general* characteristics. The universal

and paramount requisition, among the American Aborigines, of the guttural organs, in the use of their languages, is a remarkable type of Hebrew. I have myself stood and watched the conversations of Indians of different tribes, as well for observation on this particular point, as for others. And I can affirm, that in some instances, when I did not understand the language, my attention was first challenged to this peculiarity, by observing the muscles of the throat externally in an incessant, rapid, and vigorous play, when the lips remained open, as if fastened in that position by constraint, and rarely met in the offices of speech. In the variety of languages and dialects of America there is of course a corresponding variety in this particular. But the dominant use of the gutturals is a general and prevailing characteristic. The greatest emphases are almost universally enforced by the guttural organs—and sometimes the ventral muscles are vigorously exercised for this purpose.

The minor particles and connectives, or what might perhaps be called the rags and shreds of some languages, are wanting among the Indians of America, as in the Hebrew. And like the Hebrew, they supply this defect, or requisite rather, by affixes and suffixes, and by composition. For superlative expressions they are accustomed to

incorporate with their substantives and attributes, some alphabetic element, or elements of the name of the Great Spirit, like the Hebrews, who for a strong wind often say: the wind-God, or wind of God, and other compositions the like.

The author of the "Star in the West" has collected and collated a multitude of words from sundry Indian languages, composed substantially of the same alphabetical elements, nearly under the same combinations, and sometimes identical in their forms with Hebrew terms employed to express similar, and often the same ideas. The subject is curious, and even practically important, and worthy of the closest and most learned investigations. What has already been discovered, demonstrates sufficiently, that these affinities have never yet been but very imperfectly developed. The resemblances already ascertained, are for the most part merely the results of accidental notices.

Another great and prominent likeness to the ancient Hebrews is the political economy and relations of their tribes, and the patriarchal forms of their society.

And now for the *unlikenesses*:—Is it said, that the American Indians are of another blood—of a deeper constitutional die? There are *Jews*, in the Eastern world, with the law of Moses in

their hands, who are positively black! And is it incredible, that twenty-five hundred years of such exposures, and of such vicissitudes, as the American Aborigines must have passed through, on the supposition, that they are a part, or the main body of the ten tribes;—is it incredible, that their barbarous customs of living for so many ages, their filthiness, their smoky cabins, their long protracted doom to severities of every description, should have wrought very radical and essential changes in their physical constitution? Is it not rather a wonder, that the change is so inconsiderable? "Is it said, that the American languages are too diversified, and many of them too radically unlike, to admit of a Hebrew origin? Tell us what have been the transformations of language in Europe within the same period, where society has not only been fixed, compared with the mutations of the aboriginal Americans; but where civilization has reigned, and refinement advanced; and where a permanent, and with little exception, an ever-growing literature has prevailed. What have been the changes of language in Britain, in twenty-five hundred years? When one looks on the history of the world, and the changes of society, of customs, and of language, over the face of the earth, and in the same regions, even for a few centuries

—much more for some two and three thousand years — especially where barbarism has triumphed over civilization, and whole nations and people have exchanged territories, and been translated from one region to another successively, unable to secure a permanent abode—it is then no longer a wonder, it seems almost a miracle, that the American tribes retain *so much* of the manners, customs, and language of their supposed ancestors.

If a man should be so bold as to assert, that the *Jews* are *not* Jews, he would chance to be ridiculed. But is there any more reason in philosophy why he should, than to deny the Hebrew origin of the American Indians? For the proofs in the one case are of the same class, as in the other. The only difference is in the amount; and the reasons for that difference are as obvious and as satisfactory, as the nature of the evidence.

It might, perhaps, be expected, that in the discussion of this question, I should cast an eye on South America. In regard to the ancient tenants of that portion of the American continent, and of the Isthmus of Darien, I have my opinion. But it was not my intention, nor am I prepared to enter at large upon that subject. A word, however, in bar of any objection, that may possibly arise from that quarter, against the theory

of this chapter. It might seem, that the Mexicans and the South Americans were a race distinct from the North Americans. Where did *they* come from? I am inclined to the opinion, that they were distinct. I see not how it can be disputed; and if it is necessary to find a way, by which they came from the East, the western coasts of Africa, and the eastern shores of South America, are perhaps convenient enough for that purpose. There they are—or rather: —there they *were;* and whatever might have been their origin, I see not how any conclusion resulting from that question, can disturb the course of argument, into which I have been led.

It is also to be observed, that certain antiquities have been developed and are gradually developing, in North America, which seem to prove the former existence, in those regions, of great and powerful, though barbarous nations, far more important in numbers and influence, than the race of men found there, since the discovery of the continent by Europeans. And it is thought by many, that some of these are relics of generations much farther back, than would be convenient to identify them with the ten tribes of Israel. Let the issue of these antiquarian researches be what it will, this supposition, I think, is equally undisturbed, as by any results

growing out of a consideration of the antiquities of Mexico, and of the dynasty of the Incas. If those relics are shown to have belonged to another race, what does it prove against our argument? If to the recent incumbents, it is more likely to be altogether for it. *There* yet is a people, who have the argument *in* themselves and *on* themselves, as complete, of the kind and for the purpose, to establish their Hebrew origin, as the common philosophy of historical evidence seems to require.

CHAPTER II.

THE MOST IMPORTANT AMONG THE GREAT OBJECTS OF BENEVOLENCE; THE ARROGANT CLAIMS OF EUROPEAN NATIONS OVER THE AMERICAN CONTINENT, &c.

"THAT was an age of chivalry," we often hear, in reference to some former time. Every age is an age of chivalry—or rather, of a chivalrous disposition. Virtue always delights in high and noble deeds. The soul of man is full of poetry and romance. And well that it is, if it only knew how and where to display its glowing aspirations—if its wisdom in selecting the objects of its tender regard, and the fields of its enterprise, were equal to the energy of its impulses. Unfortunately, however, many noble spirits are constantly spending their holy fires in building castles in the air, fighting windmills, pouncing on imaginary foes and villains, and drawing their swords for the rescue of unfortunates, comparatively unworthy, and who will neither be thankful, nor the better for the service

done them. One age may indeed be *especially* an age of chivalry, as well for the objects of enterprise, which challenge the best and strongest passions, as for the fields, which are opened for their display. But chivalry is constantly changing its forms. If the present age, or the age now opening on the world, bears any distinctive marks of this character, it is the arming of an associate and combined determination to assert and secure the rights of man and the triumphs of Christianity. And occasionally a single horseman, fresh inspired by the holy sympathies around him, well girt and trim in armour, springs in advance of the common ranks, lifts his sword on high, and points the way. But though every band requires its captain, every army must have its various official ranks of leading influence and control. And for the greatest efficiency, there needs not only all the wisdom of united counsel, but one spirit should animate the host.

If I were demanded to specify the most prominent and immediately urgent objects of benevolent and philanthropic enterprise, I should say first and generally:—"The ark of God" and "the testimony of Jesus." This covers the entire field—the field of the world—hallows every passion, and is the only safe and sure guide to the noblest efforts of man, and to the

highest destiny of human society. Next, civil liberty among civilized nations. Next, and simultaneously, the rescue of those large bodies of the human family, which have been thrown into conditions of comparative and painful depression, by the cruel treatment of civilized and Christian nations. If mercy takes lead of sacrifice, justice goes before mercy. Justice cries to heaven for the American Indian, for the enslaved African, and for the depressed millions of Hindostan and of the wide regions along the Ganges and its tributary waters.

The enterprise of Christian nations has found out all the world, has taken possession of the world. Christian nations have first planted their colonies, wherever the hopes of gain allured their merchants; and next, they have subjugated the heathen, wherever the prospects of dominion were likely to prove advantageous. The first assumptions of influence and power in these remote regions are always more or less violent. We may say, perhaps, it is uniformly done at the expense of the acknowledged rights of man. Certainly it was so in America. And where has it not been so? We may find some consolation even in this, if it can be hoped, that it was one of the unavoidable evils, in the way to the redemption of the world from ignorance, from the worst of

vices, and from the debasing influence of the most cruel and revolting superstitions; that this is an order of Providence to raise mankind universally to the highest dignity and happiness. But while it is the province of Jehovah to bring good out of evil, still even such a result makes no apology for the breach of social morality. The American Indian and the African have been maltreated, have been injured, have been deprived of their rights; and heaven and the moral sense of the world demand an expiation for the offence by a speedy and energetic application of redeeming measures. Else, a reaction on the aggressors, in the shape of retribution, may be, must be expected.

The arrogance, (for it cannot deserve a softer name) with which the European nations first and successively spread their pretended and assumed jurisdiction over the American continent, piece by piece, until not a single patch of ground was left, is not simply remarkable—but if it had not proved such a grave and pertinacious invasion of the rights of man, we should call it ridiculous. The first example under the authority and in the name of the Pope, seems to have sanctified the deed, not only for Roman Catholics, but for Protestant communities. As the Head of the Church, the source of all power on earth, the

sovereign lord of nations and people, wherever found, the proprietor of the bodies and the master of the consciences of all men, claiming supreme jurisdiction over all lands and seas, the Pope gave titles to their Most Faithful and Catholic Majesties of Spain and Portugal, over all such regions of the new world, as might be desired; and invested them with full authority, and especially enjoined them, to see to the salvation of the souls of the natives. How they fulfilled the last article, by ushering them speedily into eternity, is sufficiently known. His Most Catholic Majesty of France must have a title equally good; and England too, excommunicated and reprobate, that she might be on equal footing, was forced to make up in pretension what she lacked in legitimate authority. And all together, it was agreed, for commercial and political advantages, to throw the sacred and cabalistic mantle of the *seizen in fee* over the vast continent and seas of America. Thus this small community of nations, for the service of a present and mutual convenience, enacted and ratified this article of what is called *the law of nations.*

But in all propriety and honesty, and for the common protection of all concerned, it will hardly do to allow this right-of-discovery-baptism to mean so much, as has been claimed for it by

interested parties, to suit their convenience. Who will dare thus to disturb and drive asunder the foundations of morality, and apply one system of morals to one part of the globe, and another to a second, and to a third, until the number of codes shall equal the number of climes and nations? The time may come, when those who advocate such doctrines will find their influence encompassing and pressing on themselves, in a train of irresistible and overwhelming disasters. The only fair and honest interpretation of the law in question is this: That the claim of discovery relates only to the parties discovering. And its advantage, or privilege is: to occupy and use what is unoccupied and unappropriated—to trade and negotiate with barbarous nations, on principles of sound morality, and to establish and maintain a jurisdiction, honestly acquired, in distinction from, and in bar of the relative claims of civilized and rival powers. Beyond this limit the law cannot extend, without a breach of morality, and disturbing the foundations of human society. To assert jurisdiction over barbarous nations, without their consent, and to wrest from them their territories by violence, is an unatoneable outrage.

If it is expedient and best for the world, that barbarous tribes in such cases should come under

the protection, and by degrees under the jurisdiction of civilized and powerful nations, with whom they have made alliances, there is ordinarily no difficulty in attaining that object by fair negotiation. And when this can be done, it is perhaps best, not only for the world, but for the tribes themselves. But the most scrupulous regard is due to their political rights, which have not been voluntarily resigned for other advantages, so long and so far as they are a distinct community; and to all their social rights, until they are qualified and admitted to take their station in a full equality of privilege with the members of that community, with which they have become associate. The jurisdiction and care, resigned on the one part, and accepted on the other, should be strictly and thoroughly parental. If interest is allowed to stifle kindness and triumph over justice—if the lust of territory and haste for dominion are permitted to encroach upon acknowledged rights and violate engagements, then is morality prostrate, confidence destroyed, and humanity insulted and outraged. Heaven and the world will sooner or later demand retribution for such offence. It cannot be forgotten—it will be atoned. It will stand recorded on the conscience of the aggressors, the remonstrances of the injured will have registered

it in the recollections of all nations, and the moral sense of mankind, regarding a superintending and righteous providence, will await the reaction, and pronounce it just. Let the world look upon Spain, and her alienated American colonies, and be admonished. Even now does the world feel so much greater sympathy for those defenceless and injured tribes and nations, which sunk and have melted away under the atrocities of her priesthood, and the butcheries of her viceroys, governors, and generals—that they cannot say after all the disasters, which have befallen that ill-fated empire: "It is enough."

All we can say in comparison of the treatment rendered to the North American tribes, is: That it has not been so bad. But it cannot be said, that they have been treated, as they ought to have been. The original rights asserted there by France and England wear too much the aspects of violence. It may be said indeed in vindication, that a political necessity required an equally strong pretension, to defend against the claims of those, who were the commissioners of the Pope. And if this had not been made an apology for asserting the chartered rights to the letter, and realizing all their advantages, the vindication would have more weight.

Even *Vattel* has thought it necessary to wipe

away aspersion from these charters, by argument, and apparently to defend them in their literal sense. The following is a piece of his reasoning:

"The earth belongs to the human race in general, and was designed to furnish it with subsistence. If each nation had resolved from the beginning to appropriate to itself a vast country, that the people might live only by hunting, fishing, and fruits, our globe would not be sufficient to maintain a tenth part of its inhabitants. People have not then deviated from the views of nature, in *confining* the Indians within narrow limits. However, we cannot help praising the laudable example of the English puritans, the first settlers of New England, who, notwithstanding their being furnished with a charter from their sovereign, purchased of the Indians the land they resolved to cultivate. And this laudable example was followed by William Penn."

This argument is specious, but the morality of it is unsound. It was made up, not to vindicate some great state necessity, or the necessities of the human family, but to justify a series of acts, which, considering their authority, it was convenient to speak of with respect. The case never did occur, (and probably never will) where

it was necessary to commit a violence, I will not say, on the *claims* of a people previously undisturbed, but not even on the *habits* of their political economy, whatever they might be,—in order that a place might be found for the overplus population of crowded districts;—nor for the honest pursuits of trade and commerce;—nor for the laudable enterprise of colonizing barbarous regions in the establishment of better materials of society. A consent, equitable and honourable to the parties, can always be obtained, for all that is necessary, important, or lawfully to be desired. I do not say, there will never be any quarrels, after these relations may have been formed. That is not unlikely. If any member of a civilized community has reasons to wish to traffic with another, and the second person declines, he must wait, until he is willing, or turns somewhere else. He never presumes to resort to compulsion. For besides, that he would be obnoxious to penalties, such a course would disturb the harmony of society. If civilized nations cannot at once and by lawful means get the footing and influence they may desire among barbarous tribes, let them wait till they can. But never let them pursue a course which they would not be willing should be practised on themselves. For a civilized and powerful community to take advantage

of the ignorance and weakness of a barbarous people, is not only inglorious, but it is positively immoral and dastardly. To assign, as a reason, that the good of the world demands it, is worse still.

Whenever the time shall come, to find the civilized world inconveniently crowded, and barbarous nations combining and rising to defend large and rich territories from being used to answer the necessities of the human race,—or to inhibit and discourage lawful commerce and trade, utterly refusing intercourse and declining all generous offers to improve their condition—that will be soon enough to advocate the doctrine of force in such an application. But to *invade* the territories of barbarous nations, under the pretence, that it was the design of Providence, that they should be otherwise appropriated, is a claim, for which we know not how to express our contempt and abhorrence. It is not simply sanctifying crime by throwing over it the garb of religion, but it is seizing the Creator's hand, and demanding of him to ratify and seal the violence!

"However, we cannot help praising the laudable example of the English puritans," &c. says Vattel. Aye, it was suitable to commend it. And the praise is an indirect and the severest

censure on his own argument, which immediately precedes. The facts here eulogized, and the history of all other similar transactions ever attempted, demonstrate, that it was never necessary to do violence even to the claims of barbarians, to accomplish the legitimate objects of peopling the earth, and extending human improvement;—that it was never necessary to assert a territorial title, or a jurisdiction, in relation to them, which had not been acquired by open and fair negotiation;—that it was never necessary to use one code of morality in Europe and another in America.

What is a title of land? Where there are no previous claimants, the best title, unquestionably is: occupancy and use for such purposes, as may be convenient to the tenants. Although we know very well, that in civilized communities men hold titles of land, which they never saw, and never use—lands, too, the use of which would be of great convenience to thousands of their suffering fellow-creatures. Neither are the written documents executed in due form the title, but only the evidence. The *title itself* is the *consent* and *will* of the community, that he who can produce the oldest and best authenticated *evidence* of this sort, is the owner of the land. And what is jurisdiction?—The right of an

associated community to legislate for all political and social purposes within such limits, as are allowed to them by other and bordering communities, if such there be, and the right of maintaining their own institutions, and executing their own enactments to the same extent. Clearly, they may have as much, and as little law, as they please—or none at all, if they can live without. It is neither the amount, nor the form of their legislation, that entitles them to their jurisdiction —except, that the abstract notion seems to imply the existence of law. But the essence of the claim is the *relative right* to have and to support it, unencumbered by *previous* claims. And there is no community, even of barbarians, without law—and never was, and never can be. Are not the barbarian's right of jurisdiction and his territorial title, as good and as sacred as the civilized man's? And if not, what makes the difference? Civilization? What is civilization? Who will define the boundary between the two conditions? And when that is fixed, who will count the barbarians in Russia, in Germany, in France, in Great Britain, and separate them to their own proper doom?

What, then, is it, that endows man with his rights? The form of humanity—that is it. And who gave him his rights? He who gave him

that form. And who may take them away? He who has a right to lay that form in the grave. But even he will not do it. The rights of man are sacred, by all the obligations of God's eternal throne. Jehovah has defined them, and set himself as their guardian, and will not hold the transgressor guiltless. The felon, or the community, that shall dare to lay their hand upon them, shall do it at the peril of Heaven's high displeasure, and certain retribution.

The absurd pretensions to jurisdiction and territorial title, thrown over the American continent by European powers, have produced the greatest imaginable inconvenience and embarrassment, and a series of public acts of injustice, the end of which cannot be seen. They have confounded right, by introducing, a new and monstrous code of political and social morality. They have in this particular corrupted the sacred bench of justice, and compelled such jurists, as Vattel, to stumble on their own arguments, and render themselves ridiculous. For they must needs give a reason; and when they can do no better, they will tell us: it was the design of Providence!

We rejoice in being able to say, that the first and subsequent settlements of North America by Europeans, and their gradual extensions of

territory and jurisdiction, have *generally* been effected by the *forms* of open and fair negotiation with the aboriginal tribes. Obvious propriety and the moral sense of the colonists forbade, that they should assert the high prerogatives of their charters. But still the charters, in this particular, have been the means of immense mischief. They have been resorted to, as we shall see by and by, when convenient, and when principle was not strong enough to secure the right. They have widely diffused their leaven of unsound morality, and become more or less incorporated with the law of the land. And it is acknowledged on all hands, is known to all the world, that the Indians have been injured—injured greatly—and that under their injuries, they are continually melting away, like snow from under the sun. One tribe after another is becoming extinct, and dropping into oblivion. And unless the causes and the tide of their desolation can be arrested, the time will not be long, before it will be said of them: *The Aborigines of America are no more.*

European policy and European assumptions, in regard to America, gave the original shape and impulse to the career of their ruin. It happens, however, that their destiny is now in the hands of Great Britain and the United

States. And if there ever was a suffering people, cast-off, forsaken, and oppressed, whose loss has been the gain of the world, and demanding the spirit of ancient chivalry for their rescue—a spirit, however, to be tempered and guided by the wisdom of the age—it is the oppressed, the forsaken, the cast-off, and the suffering tribes of the aboriginal Americans.

CHAPTER III.

THE PROJECT OF THE AMERICAN GOVERNMENT TO REMOVE THE INDIANS FROM THE EAST TO THE WEST OF THE MISSISSIPPI.

"OUR efforts to stand between the living and the dead, to stay this tide which is spreading around and over them, have long been fruitless, and are now hopeless."* And who is so cruel, to reveal such a doom? Is it not enough for them to die, but must they die insulted? And insulted by those, who have forced them into the grave.

It was understood before the opening of the sessions of the Congress of the United States for 1829-30, that a large appropriation of money would be recommended by the President, and moved in Congress, for the removal of the Indians

* North American Review for January 1830. *Removal of the Indians.*

into unoccupied territories west of the river Mississippi; and that the decision of that question was destined to constitute a very important and momentous crisis in the history of that long abused race. If the appropriations should be carried, the measures consequent upon it were likely to exercise a controlling influence for the ultimate removal of all the Indian tribes on the east of the Mississippi to regions beyond. It was also understood, that the measure to be recommended would be vigorously contested, even to a doubtful issue. A great political question of the State of Georgia in relation to the Cherokees within her bounds, whom she was wishing to get rid of—a question which unfortunately had compromised the policy of the national administration—was suspended on the result of these anticipated deliberations of Congress. So also the interests of two or three other States at the south were deeply merged in this question, within the limits of which large tracts of territory were still in possession of Indian tribes. Other wide and rich districts, in various parts of the Union, east of the Mississippi, still in the hands of the Indians, were also involved in the measure.

The expense of this removal of numerous and large tribes, and securing their comfortable

establishment in their new abodes, as may be imagined, would not be inconsiderable. And as this project had got to be the fixed and determined policy of the existing administration, a large appropriation of money by Congress was necessary to sustain the enterprise. Would the Congress of 1829-30 respect the recommendation of the President for this purpose?

Unfortunately for the Indians this question, by an unavoidable combination of circumstances, had become a party question, and arraigned in its ranks the supporters and opposers of the Government. It is remarkable, however, that that portion of the American public, who had been engaged in the benevolent plans for the melioration and improvement of the Indians, civilly and morally, were universally opposed to the policy of removal. The interested motives, the rashness, and the Utopian character of the enterprise stamped it at once, in the eyes of this class, with features of a dubious and portentous aspect, so far as the real welfare of the Indians was concerned. The hopes of the recent, more vigorous, and more efficient labours of the benevolent among the Indians east of the Mississippi, had just began to be realized. It was argued with apparent good reasons: that to break up and translate whole tribes, of diverse

languages and customs, and throw them together for the purpose of making one community, was not unlike the wild project of breaking up so many civilized nations, and jumbling them together in a distant and unexplored region, with the expectation, that they would readily amalgamate, and that their condition might be improved. Besides, the contemplated theatre of the experiment was already in possession, and encumbered with the rights of barbarous tribes from time immemorial. How were they to be satisfied? The country itself was unexplored — certainly too much so to risk a sudden occupation for such a responsible and momentous object. No one knew its resources, or susceptibilities, with any tolerable accuracy. Indeed reports of a very unfavourable character of its capabilities to support a population, depending on the culture of the earth, had been received from the remoter districts, contemplated to be occupied for this purpose. And certainly, it was argued, no man in his senses, and feeling a suitable responsibility, would think for a moment, of throwing together scores of Indian tribes, to quarrel and make an end of each other by their own dissensions; when the whole history of the race, if it proved any thing, proved, that, in their untamed condition, they could never endure a contiguity.

The project, in all points of view, by these opponents of the scheme, was deemed hasty.

As those interested in the removal of the Indians had contrived to make the question a party one—at any rate it became so—the great body of the people—of the nation—were taken by surprise; and the question was brought forward and urged to a decision before it was possible for the public to be adequately enlightened, and under such influences of party feeling, as utterly to disqualify them for a judgment on the abstract merits of the case. The mass of the people as yet knew little or nothing, as to what might be best for the Indians in relation to this question, and were generally innocent in adhering to the great political party, to which they severally belonged. In such circumstances, and under so sudden a proposal of this new measure, it was impossible, that the people, as a body, should be guided by the naked justice, or expediency of the proposal, because they were not sufficiently informed to decide upon it. And such substantially was the state of mind in Congress:—it was entirely a new question, and each one naturally fell into the ranks of his party, as it began to be agitated. It was not, that the nation, or Congress—it was not, that the mass of the dominant party—were

willing to do injustice to the Indians, or pursue a course of treatment, that would not be for their good. Arguments could be offered on both sides, and every one stood in the light, which happened at the time to shine upon him.

The incipient measure proposed was for an extraordinary appropriation by Congress, to defray the expenses of removing those tribes, who had already been persuaded to go; which, it was said by those who urged it, did not necessarily involve, or decide the question of a general removal. The measure, however, it was discovered, would be vigorously contested, and with doubtful issue. At this moment an article appeared in the North American Review for January 1830, from which I have quoted the first sentence of this chapter, and which was supposed to have had a controlling influence over the question in Congress now under consideration. It was an able—and, so far as the nature of the subject admitted, a plausible argument for the removal of the Indians. It is not to be inferred, that this highly respectable periodical was, or is devoted to the policy, which this article advocated; for it generously admitted a conflicting argument on the same question during the same year, although too late to answer a material purpose. The article for

January was doubtless received by courtesy, and out of respect to the distinguished individual, who offered it.

The leading purpose of that article seems to have been to prove, first, that with all the expenditures of benevolence, of money, and of labour, which have been exhausted upon the Indians for two hundred years, they are none the better, and are perishing without hope; consequently, that a radical and thorough change of treatment is indispensable to the preservation of their existence, and if possible in any case, indispensable to their improvement; and finally, that a removal of the eastern tribes to the unoccupied territories of the West, is the only remedy and the last hope. And incidentally, (and unfortunately I may add) in the course of this argument it seems also to be made out, that the Indians are in fact *incapable* of improvement; that the original policy of the European nations, in assuming jurisdiction and asserting a *seizen in fee* over the American continent, irrespective of the rights of the aboriginal tenants, was just and proper, and consequently, that the United States are justified in following this example; that, as the Indian tribes, by their own intractable perverseness, have already dwindled to a very small remnant, the value of justice, in its distributions

to them, is to be estimated by the number of individuals who are to enjoy its benefits; that, as Providence has evidently designed the earth for culture, a race of men, who will not improve it, and who will not themselves be improved, are not to stand in the way of those, who are ready to take possession, and fulfil the purposes of Heaven; and finally, it seems to be proved, though not asserted, that the sooner these Indians, so utterly irreclaimable, are removed from the face of the earth, the better.

That it was in the heart of the writer of this article to furnish a warrant for this concatenation of deductions, I do not pretend to say—charity would hope better things. But to show they are not without foundation, I will quote a few passages from the Review in question:—

"Existing for two centuries in contact with civilized people, they (the Indians) have resisted, and successfully too, every effort to meliorate their condition, and to introduce among them the most common arts of life. Their moral and intellectual condition has been equally stationary. And in the whole circle of their existence, it would be difficult to point to a single advantage, which they have derived from their acquaintance with Europeans. All this is without a parallel in the history of the world. That it is not to

be attributed to indifference, or neglect [of their white neighbours] we have shown. There must then be an *inherent* [?] difficulty, arising from the institutions, character, and condition of the Indians themselves."

"Our efforts to stand between the living and the dead, to stay this tide, which is spreading around and over them, have long been fruitless, and are now hopeless. And equally fruitless and hopeless are the attempts to impart to them, in their present situation, the blessings of religion, the benefits of science and the arts, and the advantages of an efficient and stable government. The time seems to have arrived, when a change in our principles and practice is necessary; when some new effort must be made to meliorate the condition of the Indians, if we would not be left without a living monument of their misfortunes, or a living evidence of our desire to repair them."

"The position occupied by the Indians is an anomaly in the political world, and the questions connected with it are eminently practical, depending upon peculiar circumstances, and changing with them." [!!]

"What tribe has been civilized by all this expenditure of treasure, and labour, and care?"

"From the St. Lawrence to the Gulf of

Mexico, under the French, or British, or Spanish, or American rule, where is the tribe of Indians, who have changed their manners, who have become incorporated with their conquerors, or who have exhibited any just estimate of the improvements around them, or any wish to participate in them?"

"They stand alone among the great family of man, a moral phenomenon, rather to be surveyed and observed, than to be described and explained;" — — —"a distinct variety of the human race;" — — —"wild, and fierce, and irreclaimable, as the animals, their co-tenants of the forests."

Thus much of the *nature* of the Indian—a discouraging picture, indeed, and if it be a fair one, a remediless and hopeless prospect! It is confessed, that these passages are detached, and selected and arranged, not very studiously, yet somewhat perhaps in a climacteric order. They are, however, if I have made no mistake, exact copies; and I am not aware, that the grouping of them here does injustice to the current of the text. They only express and support my impressions.

And really, I know not in what terms to express my astonishment at these statements. My readers will not have forgotten the Stockbridge tribe, and the other New York Indians,

who figured somewhat in the first volume at Green Bay; and who were brought in such juxta-position and comparison with the wild and uncultivated tribes of that region. They will not have forgotten the Rev. Mr. Williams, and his amiable, and interesting, and we might add, accomplished wife. Say, that some of these are mixed bloods. The Stockbridges and Oneidas are not mixed. The Rev. Mr. Jones, lately in England, from Canada, I believe, is not mixed. The young gentleman of the Oneida tribe, of a liberal education, of exemplary and accomplished manners, who wrote out and read publicly before the Commissioners at Green Bay, the vindication of the rights of his own people against the usurpations of the white man, is a pure Indian. Daniel Bread, an Oneida Chief, whose name occurs in the first volume, as having taken part in the public deliberations of the Council, than whom a purer spirit, or a man of meeker, kinder manners, I will venture to say, cannot be found—is a pure Indian. The venerable John Metoxen, chief of the Stockbridges, a most exemplary christian, of manly and vigorous intellect, and full of all propriety of demeanor—is a pure Indian. And John Quiny, the younger, of the same tribe, would honour any society. Not a drop of European blood runs in his veins.

But, as I might have said, I know not where to begin in this recital; so I am compelled to say, I know not where to stop, even in my slender acquaintance with the Indian race. He who had seen the New York tribes, as a body, at their first home and around the graves of their fathers, and been forced to compare them only with their white neighbours, might have said: they are Indians; because he could not know what an Indian is, in his native wildness. But he, who has seen the same people by the side of the Winnebagoes and Menomenies in the North-West Territory, would say: they are princes. He would be amazed at the transformation, which even a contiguity with civilized society had produced. Is there any power on earth, that can send the Stockbridges and the Oneidas of Green Bay back to paganism, and to the habits of a savage life? There are many portions of civilized and christian communities, which might send a deputation there, to learn the decencies and sobrieties of civilized life, and the decorums of christian society, and profit by it.

Many, countless are the individual examples I might recite of American Aborigines, and of pure aboriginal blood, whose intellectual and moral cultivation, and whose civilized habits, would be most unfortunate examples to be adduced in

support and vindication of the cruel libel, contained in the passages I have quoted from the North American Review. What would the writer of that review demand of the Indians, as proofs of their susceptibility of improvement? Miracles? He knows well, and all the world know, the disadvantages, under which the Indians have laboured, from the first of their intercourse with Europeans, down to the present time. It is not true, as he would insinuate, that their relations to civilized society have been favourable to their improvement. They have been any thing, but favourable. It is true, indeed, that a few benevolent and disinterested spirits have exhausted their energies, and become martyrs to redeem and save this depressed and injured race. But all their influences have been more than counteracted, not only by the criminal neglects of the great mass of civilized society, with which the Indians have come in contact, but by the positively deleterious intercourse and example of the more vicious of the whites. Knowing as we do what human nature is, (for after all I cannot accord with the Reviewer, that the Indians are so "distinct a variety of the human race,") it is not difficult to see, that in such circumstances, the Indians could not rise, more than they have, without a miracle. It is more

wonderful, when we are made acquainted with what they were, plunged into the lowest conditions of barbarism, and then consider the influences, which have been operating upon them by their contact with European society, that so many individual examples of improvement, and such degrees of general and public amelioration have been demonstrated. It is an exact, but disgraceful truth, that no advantageous and fair effort has ever yet been made for the general cultivation of aboriginal character, not even of a single tribe. I say—*advantageous* and *fair*, so as to justify the sweeping declarations of this Reviewer. What are single-handed efforts of benevolent individuals, against a world of influences of a pernicious character, bearing constantly upon the same unfortunate people?

But notwithstanding all this, I have shewn, that Indians, brought in contact with the whites, have improved, generally and individually. It is true, that this writer speaks with disrespect, not only of the northern, but of the southern tribes—of all, from the Bay of St. Lawrence to the Gulf of Mexico. He declares his diffidence of the accounts rendered of the improvements of the Cherokees in Georgia, draws the dash of his pen alike over those benevolent persons, who have consecrated their lives to the welfare of the

Indians, and over the work of their hands; and more than intimates the little credit, that is due to these reports. And yet it is true, that the Cherokees have achieved a thing, in literature, which thousands of years fail to produce in civilized society. They have invented and reduced to actual use an *alphabet* of their language. It may be said, indeed, that civilized society has no occasion for it. But why have they not done it for those barbarous tribes, with whom they have come in contact? The Cherokees *had* framed a political fabric, and a civil government, with a written code of statutes, and brought the system into actual and successful operation; until the state of Georgia, alarmed at their progress, threw over them their own jurisdiction in defiance of the bonds of public and solemn treaties, and arrested the movements of the machinery of Indian society by force of arms. The Cherokees *had* schools of education for their children,—I know not whether the wreck of their society, which has been made by the hand of civilized man, has left them in the enjoyment of that privilege. They have for many years had a printing press, from which, besides a gradual multiplication of common literature in their own language and with their own alphabet, and in the English language, has also been

published some eight years or more, a respectable weekly Gazette, edited and sustained by one of their own nation, in the columns of which are always to be seen the characters both of the Roman and the Cherokee alphabets. They *had* the ordinances of Christianity, until the Christian Government of Georgia took away their Missionaries, and doomed them to four years' hard labour in the Penitentiary, because they insisted on remaining with their charge under protection of the treaties between the United States and the Cherokee nation. And here we are tempted to introduce the following poetic effusion, put into the mouth of a Cherokee child in an address to the children of the United States:—

" We had a teacher, and his voice was kind
To us poor Indians. Though his brow was white,
He did not scorn us. When he spoke of Him,
Who took young children in his arms, and died
Upon the cross for sinners, such a light
Would kindle in his eye, and he would strive
So for our souls' salvation, that we bless'd
His holy tenderness. But he is *gone*.
They took him from us. Men who would not heed
Our misery, did hang a heavy chain
About his neck, and o'er the rocky road,
And through the storm and darkness, led him on
To lock him in a prison. Side by side
With the blood-shedder and the thief, he toils,
Clad in coarse garments, and with no fond smile
Of wife, or babe to cheer him. Months have fled,

And they release him not. Yet he hath done
No harm, except to teach the Cherokees
Their Bible duty, and the hope of heaven,
That glorious home, from whence no foe can drive.
Each night I weep, and ask the *white man's God*
To give us back our teacher. Pray for us,
White children! happy children! you who know
Far more than we. Oh! when you kneeling ask
Pity for those who mourn, beg God to bring
Our blessed teacher from his prison-house
That we may listen to his words again."

But although the above lines are rather a plaint, expressive of Cherokee suffering, than an example of Cherokee improvement, I will not deny myself, in this place, the introduction of a letter, too pertinent to my purpose, in more than one sense, to be omitted. I receive and insert it, as the genuine production of a native Cherokee, first published in the Cherokee Phœnix, the paper already alluded to. The editor of that paper, addressed in the letter, is also a Cherokee, was educated at Cornwall, state of Connecticut, and received his Christian name in honour of Elias Boudinot, author of "the Star in the West," friend and patron of the Indians, and first President of the American Bible Society. Mr. Boudinot, the Indian, married a white woman in Connecticut, returned to his nation about ten years ago, established and has since superintended the Phœnix, and by all convenient ways, has

laboured incessantly, in conjunction with other chiefs of his tribe, to improve and elevate the character of his people, and to defend their territory and rights from usurpation.

" *Cherokee Nation*, 22*d Aug.* 1832.

" MR. ELIAS BOUDINOT,—

" Having understood that your successor in the editorial department is not yet appointed, and that consequently you have yet a claim to publish any communication upon the affairs of our common country that a citizen may write, I hope you will excuse the liberty I take in addressing this to you. Having no claim to wisdom or learning, and no pretension to wealth, this comes from an humble individual who resides in a little log hut daubed with mud, covered with clap-boards, and having no other flooring, where I write, than the solid earth, for which our ancestors have fought and bled in days past, and for which our chiefs have recently maintained a long and expensive controversy with the Georgians in their own courts and the Supreme Court of the United States, where their labours have been crowned with the greatest intellectual victory ever recorded in the annals of the Aborigines of America!

" Poor as I am in the world, the attachment I feel for my natal spot, for the shades under which I played in boyhood, and the springs of water

where I have quenched my thirst, and the crystal streams in which I have bathed my limbs, for my patch of corn and little orchard I have planted; and above all, the *right* of having my own chiefs of my own colour to pass laws for me in my own language (the Cherokee) is very great. It is therefore with feelings of great distress that I have read your letter of resignation, in which you state there is now no hope of relief, and that the people of America are now silent about us poor Indians. My children often, in their innocence and ignorance, ask me, who the Georgians are, and whether they would kill us for our lands, and what I wept for? O gracious Father in Heaven, has it come to this? are we left to the mercy of a haughty people who rob us every day? Has the broad shield of the United States been withdrawn, and will not Gen. Jackson pity us and execute the laws now declared to be constitutional by the Supreme Court? Will not Congress make him do it? Where is the eloquence of our friends, and have they also despaired? Have a number of them addressed a letter directed to Mr. Ross on this subject, and has one of the associate Judges of the Supreme Court done the same?

"I believe that you are the friend of the poor and ignorant, and that you have told the truth—

harshly as that sounds in my ears, I respect you for it. You are indeed our friend—your acts have shewn it, and we know it. I am one of those who love the chiefs, and believe that they are good men and true, and that sooner than submit the freedom of our people into the hands of the whites, they would walk and carry us through a fiery furnace to a place where our people may be free. It is for that we live, and are willing yet to live, in this cruel world.

" I have not yet seen in print Mr. Ross's message to the Council at Red Clay, and I do not know what are his views and hopes of the re-adjustment of our rights, if he has any, and the reasons of his hopes, and upon what they are founded. Why do you not publish his message? if it is consolatory—the people ought to have it. But if I may judge from his proclamation of the 3d July on the subject of a fast, humiliation and prayer upon the crisis of our affairs, I should presume he too had no comfort. He says in that message, ' Whereas, the crisis in the affairs of this nation exhibits the day of tribulation and sorrow, and the time appears to be fast hastening when the destiny of this people must be sealed,' &c. Then indeed, if it would do good I could weep tears of fire, because my heart is in a flame!

" The deep foundations of these United States have been laid upon the anti-human policy of Europe, which issued charters to cover our lands in usurpation. The Anglo-Americans have carried out this usurpation and have cherished their republicanism and Christianity upon the blood and smoking ruins of the Indians! To satisfy the avidity of these ' pale faces,' what have we not done? We have relinquished province after province in vain. Has the tomahawk saved us? No. Has the pipe of peace smoked with them in council saved us? No. Has civilization and Christianity (for we have tried them) saved us? Let the slaughtered Indians at Muskingum rise from their ashes and answer. Let our own dear missionaries in the walls of the Penitentiary, let the whole Cherokee nation answer, NO!

" It has been said by some that the chiefs care not for us, and that when the nation falls to pieces they will save themselves upon choice reservations, and become citizens of the United States, and let us common Indians shift for ourselves, to die like the wounded deer in the wilderness of the West! I do not believe it. For patriotism they may well stand by the ancient sages of Greece and Rome, because they have all along resisted temptation slily thrown in their path at various times and ways.

"When we have tested the U. S. all we can—when we are ready, I trust and believe we will take our women and children and go to the verge of the globe, on the shores of the Pacific, and there raise up our own standard, kindle up our own council fire, and leap out of this accursed state of pupilage *under such guardians*, and make of ourselves a foreign nation, or gloriously die in the attempt.

"ROCKY MOUNTAIN."

Mr. Ross, whose name occurs in this letter, is a chief, I suppose head-chief, or governor. I do not know the official names of their civil magistrates under the late construction and organization of their polity. The allusions of this letter will distinctly shew the actual existence and operation of such an organization. How far it has been arrested and broken down by the execution of the special statutes of Georgia, enacted in 1829, and thrown over the Cherokees for that purpose, I am unable to say. The efficiency of the new government, however, has been paralyzed, and I believe its substantial parts have been thoroughly dissolved, as the statutes of Georgia imposed the severest penalties for the execution of Cherokee laws in their own territory, and were decreed to take effect in

June 1830. The Cherokees are now awaiting the protection of the National Government of the Union, on the faith of existing treaties, and under a decree of the Supreme Court of the United States, passed on the 3d of March, 1832, in favour of the Cherokees, and pronouncing all the legislation of Georgia in relation to them, unconstitutional, null, and void. It is this decision, that is alluded to in the letter, as "the greatest . . . . victory ever recorded in the annals of the Aborigines of America."

It may seem incredible, if we were to consult, or regard the North American Reviewer, that the letter above introduced could be the genuine production of an Indian, sitting in his own log cabin, bedaubed with mud, with the naked ground for a floor, and surrounded by his wife and family; much more, that things of this kind should be matters of common and every day occurrence; that a weekly newspaper should be conducted solely by themselves, containing an ordinary amount of original matter, in their own and in the English language, from their own hands, and of a high literary character; that these very men should have been in the habits for many years of maintaining an able and extensive correspondence with the most distinguished individuals in the United States, statesmen and

jurists; that in the mean time they should have supported an able and partly controversial diplomacy with the Government of the United States; that they should be seen every winter at the City of Washington, in a garb and with manners, that would do honour to the best citizens of any community, received and cherished by the politest circles, and suing Congress for their rights; and finally, that by their perseverance and determination, they should have obtained a decision from the Supreme Court of the United States, after a long and patient investigation, an investigation pending for years, and the records of which will occupy volumes in the judicial annals of the Republic, and which has confirmed to the Indians all the rights which they could desire.

Are these the people, who, in the language of the Reviewer, "have for two centuries resisted, and successfully resisted, every effort to meliorate their condition, and to introduce among them the common arts of life?—whose moral and intellectual condition has been equally stationary?—in the whole circle of whose existence, it would be difficult to point to a single advantage they have gained from their acquaintance with Europeans?—to whom it is fruitless and hopeless to attempt to impart the blessings of religion, the benefits of science and of the arts, and the advantages

of an efficient and stable government?—whose position is an anomaly in the political world?—on whom so much treasure, and labour, and care have been wasted in vain?—who have never exhibited any just estimate of the improvements around them?—nor any desire to participate in them?—who stand alone among the great family of man, a moral phenomenon, rather to be surveyed and observed, than described and explained . . . . . a distinct variety of the human race . . . . . wild, and fierce, and irreclaimable, as the animals, their co-tenants of the forests?"

Verily, had a man of the most splendid abilities, full of the most copious language, set himself to construct the most atrocious libel, that was ever framed in application to any class of the human family, I know not how he could have attained a higher, a more full consummation of his purpose!

If, indeed, it was necessary to prove, that this unfortunate people are so vicious, so irreclaimable, so irrecoverably bent on their own ruin, as to afford no hope of saving them, as not to be worth saving,—in order to obtain a consent for the novel course of treatment instituted; it argues ill for the confidence reposed in the measures by their sternest advocates, as being

of a remedial character. And that this demonstration of the incorrigible nature of the Indians should have come from that quarter, where they are now obliged to look for protection—is not very encouraging to them.

CHAPTER IV.

SAME SUBJECT CONTINUED.

"THE maxims of jurisprudence, applied and enforced by wise and learned men, and practically adopted by the rulers of the old world for the government of the new, may fairly be presumed to be founded on the just and relative rights of the parties. If the christian and civilized governments of Europe, asserted jurisdiction over the aboriginal tribes of America, and under certain limitations a right to the country occupied by them, *some peculiar circumstances* must have existed to vindicate a claim AT FIRST SIGHT *revolting to the common justice of mankind.* And if these circumstances were not then, and are not now sufficiently powerful to justify such pretensions, THEIR *interference was culpable, and so would be* OURS. The

Indians are entitled to all the rights, which do not *interfere with the obvious designs of Providence, (!) and with the just claims of others. (!!)* Like many other practical questions, it may be difficult to define the actual [exact?] boundary between them and the civilized states, among whom and around whom they live. But there are two restraints upon ourselves, which we may safely adopt:—that no force should be used to divest them (the Indians) of any *just* interest they possess; and that they should be liberally remunerated for all (the lands) they cede. *We cannot be wrong, while we adhere to those rules.*" —*North American Review.*

What rules, in the name of conscience? A rule for so delicate and so responsible a procedure, should have a form and palpability not to be mistaken; which those to whom it is to be applied may understand; and that they who are authorized to employ it, may have a guide. "*Just?*" And who is to define it? "*Liberal?*" And what is the measure?

"There can be no doubt, and such are the views of elementary writers on the subject, that the *Creator intended* the earth should be reclaimed from the state of nature and cultivated; that the human race should spread over it, procuring from it the means of a comfortable subsistence,

and of increase and improvement." And when a civilized people approaches barbarous tribes, it is a dictate of nature, that the territories of the latter "should be occupied for permanent improvement, whenever they are necessary to one party, and can be spared without injury by the other."

"The mode of acquiring the possessory right of the Indians is a question of *expediency*, and not of *principle*." "We are prepared to expect, that many worthy and benevolent men will be *shocked* at a proposition, which would leave it to one party to judge what extent of territory should be yielded by the other, and what consideration should be awarded."—*Ibid.*

The above are all extracts from the writer already alluded to in the North American Review for January 1830, on the *Removal of the Indians*, the influence of which it is supposed gave a small majority in Congress for the appropriation called for to commence this responsible and momentous measure. And here, if I mistake not, I have grouped the sum of the *doctrines* of the writer on this subject. In the last chapter but one I hinted at the infinite and endless mischief, accruing from the original and absurd claims of European powers over the American continent. I do not think it necessary to my

purpose to burden these pages with copies of the royal charters and patents, by which America was parcelled out from time to time, and section after section. I admit all that this writer, or any body else may choose to claim for them in this particular, viz. that they asserted jurisdiction over barbarous countries, "unoccupied by any christian prince or people," and conveyed to the privileged party, or parties, in whose favour they were granted, a full and absolute property in the soil of those countries—all without regard to any rights of the native tribes. And if this authority is sufficient to establish the relative rights of the present American government over and against the Aborigines, there is nothing more to be said. Doubtless those charters did assert, in the letter, and probably in their intent, what the morality of the present age will hardly accord; and the terms, in which they were expressed, have evidently embarrassed elementary writers on international jurisprudence; inasmuch, as it was their duty, rather to expound, than to make law. Hence the reasoning of Vattel, before noticed.

But after all, it is a dictate of common sense, that the only justifiable construction of those regulations is: the mutual convenience of the parties making their descent upon the new

world. The right of discovery and the right of previous possession may fairly be defined, as amounting to this: that such a coast and such a country, lying between given latitudes and longitudes, or other given geographical boundaries, belong to one European power, rather than to another, in all rights of jurisdiction and territory, which may lawfully be acquired there by a fair negotiation with the natives; and all political and commercial advantages, accruing therefrom. Beyond this limit it is impossible to extend the right, and satisfy the moral sense of mankind. And if I mistake not, this is substantially the *conventional* morality of the world. It cannot be disturbed, without disturbing the foundations of human society. The moment an expounder of law departs from this rule, he is embarrassed—he is at sea without compass—he is lost. A child, a barbarian is a better logician than he; and for this good reason, that the barbarian *feels* his right to the inheritance bequeathed by his fathers; and the decision of mankind will for ever sustain him. The first blush brings the right upon the surface.

Hear the Reviewer before us: "Some *peculiar* circumstances must have existed to vindicate a claim, AT FIRST SIGHT *revolting to the common justice of mankind.*" And so far as *he* is

concerned, we need nothing to condemn him, but the words of his own mouth. He saw, he felt what every one must feel, that there must have been *peculiar* circumstances to vindicate a claim so *revolting*. And what were the peculiar circumstances? They are all taken in faith, on the authority of "the maxims of jurisprudence, applied and enforced by wise and learned men," which "may fairly be *presumed* to be founded on the just and relative rights of the parties." As to the authority of the jurists, "the wise and learned men," who does not see, that it is all a phantom? What was their office? To determine the fact *that such was the law*. With the jurists, then, we have done. And who made the law? "The christian and civilized governments of Europe." And why? Because they were *crazy*. They all run wild at sight of the new world. They jumped and scrambled to possess it, and the natives at the moment had no other account with them, than the bear, or the buffalo. The accidental and arrogant forms of the instruments drawn up at that moment, when men were beside themselves, to assert and secure dominion, and seize upon the prey that seemed to be offered alike to all, who should be first in the field—must now, forsooth, be quoted *as law*, to determine the rights of the Aborigines.

Not a few would doubtless like to see this American republican driven to the lengths of his own argument. For myself, being of the same family, I deny, that it is American doctrine, and voluntarily undertake the task of putting the writer to the test. "It may fairly be presumed," he says, in consideration of these respectable authorities, juridical and regal, the first created by the last, and the last being "christian and civilized," that their claims were just. In other words, the authority is reduced to this: they were civilized and christian kings, the Pope of Rome at the head of them—and all together made giddy with a new discovery and undefined expectations. Now then for the application: His Majesty, George III. was a civilized and christian king, and is of revered memory. "It may fairly be *presumed*," therefore, that his will to tax America, without allowing her a representation in parliament, was *just*; "that some *peculiar* circumstances must have existed to vindicate a claim so revolting" to the Americans. Certainly, it cannot be pretended, that it was "*so revolting*," as the claims, which this writer asserts over the heads of the American Aborigines! Will he stand to this?

Away, then, with this mystification of "peculiar circumstances;" this affected obeisance to

the authority of "civilized and christian" kings; this hypocritical reverence for the jurists, who have only explained their will. Hypocrisy is detestable in any circumstances; but when it puts on its sanctified robes to rob mankind of their rights, and to oppress them—these are its most abhorrent shapes.

Let the Reviewer's own confession settle the question: "And if these circumstances were not then, and are not now sufficiently powerful to justify such pretensions, *their* interference (the interference of 'civilized and christian kings') was culpable, and so would be *ours*;" and in my humble opinion, a little *more* than culpable in the shapes and with the force, by which it is brought to bear. The question returns: What was there *then*, and what is there *now* of "peculiar circumstance?" Was not the Indian then a *man*, and is he not *now* a man? And if so, what was, or can be *peculiar* in the case, that *his* rights are not as sacred, as any *other* man's? Or does the peculiarity consist in the measure and quantity of the Indian's rights? Let that class of men, who dare to apply a measure of right to another class, which they are unwilling should be applied to themselves, be sure that they are for ever safe from becoming the subjects of their own rule.

There *were* doubtless peculiar circumstances which originally gave being to the claim we are now considering; peculiar in relation to the *morality* of the age, in which we live; and peculiar for the romance, which characterized the enterprises resulting from the discovery of the new world. But, that a claim, affecting the rights, happiness, and destiny of a distinct class of the human race, to their disadvantage, should be founded upon a distant, hidden, mysterious, and impalpable peculiarity of circumstances, is not very noble in those, who assert it. It were more becoming the Pope, or a despot, than one, who claims to belong to a generous and free people.

" Indians are entitled to all the rights, which do not interfere with the obvious designs of Providence, and with the just claims of others. There can be no doubt, and such are the views of elementary writers on the subject, that the Creator intended," &c. My impatience at such reasoning as this has been expressed in another place. A loose and vague argument on so momentous a subject, as the rights of man, is, I confess, what I cannot comfortably endure. And to quote the authority of heaven: " Be fruitful, and multiply, and replenish the earth," — to eject the American Indians from their territories, because those lands are not " replenished,"

because they are not used as God designed, is a logic which I cannot appreciate. It will not be understood, that I object to the occupation of America by civilized man, or to its reduction and appropriation to the most important objects of human society, provided the advancements towards this purpose be made on the basis of the established and recognized principles of social morality. I believe the age is gone by, when the end sanctifies the means. . . . . "The just claims of others?" Indefinite, vague, convenient! "And such are the views of elementary writers;" that is, jurists have thus explained the intent of the original charters, spread over the American continent. Their opinion, as to the propriety of these charters, and their speculations on the designs of Providence are subject to any one's revision. I have already given *my* opinion of *their* opinion, so far as they appeal to the authority of Heaven to vindicate the assumption of another man's right without his consent.

"Like many other practical questions, it may be difficult to define the actual boundary between them (the Indians) and the civilized States, among whom and around whom they live." "Practical questions." The commentary of this, I suppose, is to be found in the following passage of this writer:—"The mode of acquiring the

possessory right of the Indians, is a question of *expediency*, and not of *principle*." A more undisguised, or more reckless prostration of morals, I can hardly imagine, is to be found on the records of sober debate. Well might this man say: "We are prepared to expect, that many worthy and benevolent persons will be *shocked* at a proposition, which would leave it with one party to judge what extent of territory should be yielded by the other, and what consideration should be awarded." And I sincerely hope, that the time will never come, when the moral sense of all mankind will *not* be shocked at these *horrible* doctrines!

My apology for such an extended notice of this article of the North American, is, that its influence, accidentally, was so considerable, and, as I conceive, so unfortunate on what is called in America—*the Indian question.* Not, that the American Congress ever recognized the doctrines contained in the extracts I have adduced; but the general argument, published at the moment the question was under debate, was doubtless influential, and in this view has acquired an importance, which it would not otherwise merit. It is supposed, that for the time it satisfied the conscience of many individuals, when called upon to discharge a momentous and most responsible duty.

CHAPTER V.

DECISION OF THE SUPREME COURT OF THE UNITED STATES, — INVOLVING THE CASE OF THE CHEROKEE INDIANS AGAINST THE STATE OF GEORGIA, AND ALSO THE RIGHTS OF INDIANS GENERALLY.

It gives me unfeigned and great satisfaction, that I am able to introduce, in the Appendix* of this volume, the decision and argument of the Supreme Court of the United States, delivered by Chief Justice Marshal, on the 3d of March, 1832, in the case I have before alluded to, of *Samuel A. Worcester* v. *the State of Georgia.* As the argument of the Court involves the substantial history of the case, I will not anticipate its developements, but would simply remark here, that the trial brought in question before the highest judicial authority of the nation the entire range of Indian rights, which have recently been so

* See Appendix.

vigorously controverted in America; and obtained a decision in that tribunal, itself the third and co-ordinate branch of the national Government, from whose decrees there is no appeal except by violence;—a decision, condemning the usurpations, which had been advanced over the Indians, and confirming them in all the rights claimed for them by themselves and their friends. Whatever, therefore, may be the course and issue of the contest in the actual administration of the executive branch of the Government, the honour of the nation is so far redeemed: that the highest tribunal, and the last authority in such controversy, after a protracted and painful investigation, has recorded its solemn and irrevocable decree in favour of the Indians.

I do not conceal, that after having sympathised and to some extent laboured in this cause, under long protracted and painful anxieties, I have felt a most cheering triumph in finding all my own views fully sustained by the solemn decisions of that high tribunal. Although that decision was announced to me in due time, I had never obtained a copy of the argument, by which it is supported, until this work was nearly ready for the press; and this chapter is actually an interpolation in the place, which it occupies. It will be seen, by a reference to the argument of

the Court, that Chief Justice Marshal has advocated and thoroughly defended my own position: viz. that the rights of discovery and the power of royal charters do not relate to the rights of the Aborigines, either to deny or impair them; but that they respect only the relative claims of European powers, liable to come into collision; and that those powers adopted this method, not to arrogate from the natives, but to defend against each other. Next, it will be seen, that the Court have made out an admirable, and what seems to me an irrefragable vindication of Great Britain, in the entire line of her practical policy towards the American Aborigines, until the principal cluster of her colonies in that quarter went off from her jurisdiction. And while I subscribe fully to this part of the argument of the Court, and am rejoiced to see the proof of it, I have not chosen on the whole to alter what I had written on this point, although in some of its features, it may seem not perfectly coincident. My own strictures have allowed to the enemies of Indian rights what they have assumed—in other words, the full weight of their own argument in this particular, viz. that the royal charters of European powers did assert, in the *letter*, original rights over portions of the American continent;—of which fact there can be no doubt.

And my object was, to dislodge them from the imagined advantage of their own ground—in doing which I have passed some censures on—(what could hardly receive a lighter name)—the *arrogance* of those charters. That some of the earliest charters deserve this censure, can hardly be doubted; and I trust the argument of my strictures will be appreciated; while in meeting opponents on the basis of their own assumptions, which have more or less of authority in them, so far as the *letter* of the instruments they quote is concerned, and which have been partly sanctioned by the names of a few venerable jurists, I have been obliged to deal with these authorities with some degree of severity. At the same time I have sufficiently protested against the constructions put upon those instruments by opponents; and in this way relieved the authorities themselves from the force of my own censures, with whomsoever the argument of Judge Marshal is admitted to be valid. With this most eminent of American jurists, whose opinion will have scarcely less weight in England than in the United States, and who in the present instance delivers not only his own, but the judgment of the high court over which he presides, in the form of a solemn judicial decision, I rejoice and am proud to be in accord. And I am truly glad

to find the policy of Great Britain towards the American Aborigines thus far exculpated from fault, by such disinterested, sober, and high authority.

The Supreme Court have done themselves immortal honour. In a whirlwind of political passion, agitating the entire social fabric of the Union, shaking the very structure of the Government; in the face of and against the promulged opinion of the supreme Executive; against the vehement current of feeling from all the interested quarters; with a code of unconstitutional legislation on this subject, adopted and carried into effect by Georgia, to be demolished; with a series of unjust measures towards the Indians, multiplying in number and force for many years, and from different quarters, and gradually acquiring an almost irresistible tide of influence, to contend against; anticipated by Georgia, in an unequivocal expression of her determination never to submit to a decree against her, and by the chief magistrate of the nation, in a proclamation to the Cherokees, advising them to submit to the jurisdiction thrown over them by the State, and withdrawing from them the protection of treaties in this particular application;—*under* and *against* all these formidable influences, bearing directly upon them, the Supreme Court of the

United States came to the solemn decision, recorded it in its proper place, issued the appropriate mandate, and published the decree to the world, in the words following, viz :—

"It is the opinion of this Court, that the judgment of the Superior Court for the county of Gwinnett, in the State of Georgia, condemning Samuel A. Worcester to hard labour in the penitentiary of the State of Georgia, for four years, was pronounced by that Court under colour of a law which is void, *as being repugnant to the constitution, treaties, and laws of the United States,* and ought therefore to be reversed and annulled."

Mr. Worcester, the plaintiff in error in this case, was a citizen of the State of Vermont, employed as a christian missionary among the Cherokees within the geographical limits of Georgia, and under sanction of letters and authority from the President of the United States. In consequence of refusing to take the oath of allegiance to the new and unconstitutional laws of Georgia, thrown over the Cherokees, he was condemned and imprisoned, as aforesaid, and has already worked out a moiety of his sentence, being still in the penitentiary. As a citizen of the United States, he claimed the protection of the General Government against

the usurpations of Georgia; and his plea before the Supreme Court necessarily brought in question all the legislation of Georgia over the Cherokees, and the general relations of the Indian tribes to the Government of the United States; it has forced that Court to define and fix those relations exactly, and so far as their own opinion and decree may avail, to rescue the Indians and their rights from the power of future usurpation, and from the immense rubbish of false induction, of theory, and of special pleading, to which they have been doomed and sacrificed by artful politicians and interested land-jobbers.

As the argument of the Court is long, I have been unwilling to occupy so many of the pages of the text, as would be necessary for its insertion in the heart of the volume. And yet I beg leave to say, if it be necessary, that the perusal of it in this place is not only desirable for a comprehensive view of the whole *Indian question*, as it exists in the United States; but it will be quite convenient and even necessary in what remains of my task, to suppose the reader acquainted with that document, or rather with the *two*,—as the opinion of one of the *Associate* Judges will be found along with that of the Chief Justice. They are in short a comprehensive text of all I have

said, or may yet have occasion to say. They are enough in my opinion to enlighten the world upon the subject; enough to form the public opinion of the world, on the only correct basis, in relation to the rights of the American Aborigines; and I believe they are destined to fulfil that office.

If the supreme judiciary of the United States, itself a co-ordinate branch of the Government, and the ultimate tribunal of appellate jurisdiction in the case, has come to this decision in favour, not only of Mr. Worcester and his fellow-prisoner Mr. Butler,* but of the whole Cherokee nation and of the Indians generally—why, it may be asked, does not the decree take effect to the satisfaction of the injured parties? Why are not Messrs. Worcester and Butler set at liberty? Why are not the usurpations of Georgia over the Cherokees relinquished, and those Indians permitted to resume the self-government, which they had organized and put in operation among and over themselves, before its machinery was arrested and their institutions crushed by the violent hand of the State, within whose chartered limits they reside? I am sorry to be obliged to record the facts, which make the answer of these

* Mr. Butler was a fellow missionary with Mr. Worcester, and received the same sentence. Mr. Worcester's case only was tried, as the decision of one would determine the other.

questions, and which are not only likely to hold those worthy missionaries in their ignominious and painful confinement, till they have exhausted the term of their sentence; but which still throw over the destinies of the Indians a dubious and dark cloud. I have already alluded to some of the painful circumstances and formidable oppositions, direct and indirect, under which the Court came to the decision, so worthy of themselves, so honourable to their character, so manly and dignified, so just in itself, and demonstrating that elevated and noble independence of a high tribunal of justice, without which the rights of a community have no warrant of security. The Court were not insensible, as will appear from their own language, of the peculiar delicacy and awful responsibility of the decision they were obliged, in the discharge of their high functions, to pass upon their records, and announce to the parties concerned.

"This cause," says the Chief Justice, "in every point of view in which it can be placed, is of the deepest interest. The defendant is a State, a member of the Union, which has exercised the powers of government over a people who deny its jurisdiction, and are under the protection of the United States. The plantiff is a citizen of the State of Vermont, condemned to

hard labour for four years in the Penitentiary of Georgia, under colour of an act, which he alleges to be repugnant to the constitution, laws, and treaties of the United States. The legislative power of a State, the controlling power of the constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, are all involved in the subject now to be considered. It behoves this Court in every case, more especially in this, to examine into its jurisdiction with scrutinizing eyes, before it proceeds to the exercise of a power which is controverted."

The Associate Justice, M'Lean, says: — "This case involves principles of the highest importance, and may lead to consequences, which shall have an enduring influence on the institutions of this country. Not to feel the full weight of this momentous subject, would evince an ignorance of that high responsibility, which is devolved upon this tribunal. We can look only to the law, which defines our power, and marks out the path of our duty."

When we consider by whom these observations were made, in what place, and on what occasion, I know not which to admire most: their simplicity, or their dignity, or their weight.

" It behoves this Court in every case," says the Chief Justice, " more *especially* in *this*, to examine into its jurisdiction with scrutinizing eyes, before it proceeds to the exercise of a power, which is *controverted;*" controverted by a member of the Federal Union, which is in fact defendant in the cause, but which refuses to appear, and which has more than intimated her determination, not simply to decline the jurisdiction of this Court in the case, but if its decree should be against her, to resist its enforcement to the last extremity; and controverted by the chief Executive of the nation, who has incidentally prejudged the case, and instituted a train of leading measures, calculated to control the issue. Well might Judge M'Lean say: " This case may lead to consequences, which shall have an *enduring* influence on the institutions of this country." And the same judge has ventured also to say, (see his argument in the Appendix,) in rebuke of this extraordinary assumption of prerogative in the Executive:—" It is not less important, that the legislative power should be exercised by the appropriate branch of the Government, than that the executive duties (*only*) should devolve upon the proper functionary." In anticipation of the falling of the decree, already passed, *dead*

from the tribunal, he adds: "*and if the judicial power fall short of giving effect to the laws of the Union, the existence of the Federal Government is at an end.*"

The President of the United States, who was inaugurated in that high office on the 4th of March 1829, was inclined, we will suppose from a belief that it was best, (his political opponents charitably suppose, in *policy*,) to use his influence for the removal of the Indian tribes from the east of the Mississippi river, and plant them somewhere in the distant regions of the west. And with all that power, which the constitution of the General Government and a series of enactments by Congress have vested in the chief magistrate over the Indians, he has been able to do enough, since he came into office, towards the accomplishment of this object, to render it all but impossible for any hand, or any power to arrest the course of these measures. He has commissioned and sent agents to all the tribes on the east of the Mississippi, which are connected with the National Government, to purchase their lands, and negotiate arrangements for their removal. Nearly the whole of the North-West Territory, as described in the first volume, and comprehending a vast district, has already been purchased. The wide

and rich territories, heretofore reserved for the Indians and in their possession and use, on the peninsula of Michigan, in the States of Ohio, Indiana, and Illinois, have nearly all of them been negotiated. Most of the southern tribes, more numerous and powerful than any others, have been broken up, and are on their way to the West. The State of Georgia has not only been permitted to maintain her usurpations over the Cherokees; but as her claims have been regarded as just by the national Executive, she has realized all convenient countenance and aid from that quarter. It is especially painful to be authorized to record the fact—that a government annuity, secured to the Cherokees by treaty, or by an act of Congress, and appropriated by them, in the necessities of their condition, to maintain their suit in the Supreme Court of the United States, for the recovery of their rights, was so controlled by the war department, that it could no longer be devoted to that use; and the chiefs of the tribe, in consequence, were obliged to solicit charity of the public to discharge the fees of their counsel and other expenses.

Notwithstanding the numerous and solemn treaties* between the General Government and

* See Judge Marshal, Appendix.

the Cherokees, distinctly recognizing the political existence, and guaranteeing the territorial and other sovereign rights of this tribe, and pledging the faith and powers of the Government of the United States to defend them in the same; the responsibility of withdrawing the protection of the General Government was assumed, and the Cherokees were told, that the President could not interfere to save them from the government and laws of Georgia.

Such in substance have been the doings and results of the recent administration of Indian affairs in the United States. Nearly all the Indians on the east of the Mississippi have been set in motion; and the most considerable portions of them have been persuaded to sell their lands, and are beginning to enter on their migrations to the west. An important and momentous decision has, indeed, been obtained in the supreme judiciary, after so long a time, and by the greatest patience and sacrifices on the part of the Indians, the effect of which ought to arrest these measures. The highest court of the nation have nobly done their duty; they have recorded a decision against these enormities, which will be respected in the conscience of the world, and which can neither be expunged, nor evaded, except by violence. It is a decision, which must

and will have its influence; a decision, which, we may venture to predict, will stand unrepealed on the judicial records of the nation; for it cannot be imagined, that a tribunal can ever be created and forced into the same place, that would hazard a different decree on the same great question.

That the President of the United States will pursue the same policy towards the Indians for his second and now succeeding term of four years' administration, which has characterised his first term, there is no reason to doubt; and the time, and the powers with which he is invested, are abundantly sufficient to bring the plan to a full consummation. That he will sustain Georgia in her usurpations, and sustain her to the end of her purposes, is but too evident from the earnests he has already given; and that Georgia is inflexibly resolved, may be gathered not only from the fact, that her courts have already contemned and resisted the mandate of the Supreme Justiciary of the United States, which ordered the reversal of the sentence of the Court of Georgia in the case of Messrs. Worcester and Butler, and demanded them to be set at liberty; but as also appears from the message of the Governor of the State, delivered to the legislature at the opening of their sessions on the

6th of November, 1832, from which the following are extracts :—

"A majority of the judges of the Supreme Court of the United States," says the Governor in his message, "have not only assumed jurisdiction in the case of Worcester and Butler, but have, by their decision, attempted to overthrow that essential jurisdiction of the State, in criminal cases, which has been vested by our constitution in the superior courts of our own State. In conformity with their decisions a mandate was issued, directed to our court, ordering a reversal of the decree, under which those persons are imprisoned, thereby attempting and intending to prostrate the sovereignty of this State, in the exercise of its constitutional and criminal jurisdiction. These extraordinary proceedings of the Supreme Court have not been submitted to me officially, nor have they been brought before me in any manner, which called for my official action. I have, however, been prepared to meet this usurpation of federal power, *with the most prompt and determined resistance*, in whatever form its enforcement might have been attempted by any branch of the Federal Government."

The Governor adds :—"Not only the Supreme Court of the United States, but the superior and even the inferior courts of our own State, have

so far aided in overturning our laws and the policy of our State Government, as to declare them *unconstitutional*, and order the discharge of prisoners arrested and confined under their provisions."

The judge, A. S. Clayton, who had been guilty of this offence, was dismissed from office, and thus suffered the penalty of his high and independent determination to support the laws of his country against the usurpations of his own State.—See the letter addressed to him, in vindication of his decision, by Chancellor Kent, of New York: *Appendix.*

The following resolution was brought before the legislature of Georgia on the first day of its sessions in November 1832. Whether it has become law, I am unable to say.

"—Declaring it a high misdemeanour for any attorney, solicitor, or chancellor to appear in any court in this State, in behalf of any Cherokee Indian, or descendant of a Cherokee Indian, or of any white person in any cause, motion or petition, calling in question the State's right of jurisdiction over that portion of her territory in the occupancy of the Cherokee Indians; or who shall make any motion, or in any manner attempt, to enforce the late decision of the Supreme Court in the case of Worcester and

Butler against the State of Georgia—and to provide for the punishment of the same."

From all this it would appear, that Georgia is resolved upon her course. What, then, is to become of the decree of the Supreme Court? Their mandate will have been returned from Georgia, rejected and contemned, in January term, 1833. The Court, pursuing the line of their duty, will demand of the Executive to enforce it. But he, it is supposed, will refuse. What comes next? Impeachment! Impeachment of the President of the United States for neglect of duty, and for the violation of his oath of office! His oath is:—"I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

The Supreme Judiciary, a co-ordinate and the third branch of the Government, has passed a decree and issued a mandate, which is resisted; and their only power of execution is the arm of the President. But he refuses. He presumes to say, that their decree is unconstitutional; he assumes the office of judgment over the heads of the Court, and on the decisions of that Court. What shall be done? "If the judicial power

fall short of giving effect to the laws of the Union, the existence of the Federal Government is at an end."

If the President refuses to execute the mandate of the Court, the regular service of which has been contemned, the only remedy is *impeachment.* But *two-thirds* of the voices of the senate are required to sustain the action; and a majority, if party spirit happen to run into it, will peradventure acquit him. What then ?—Let the Governor of Georgia answer this question from his message of November, 1832. Let it not be supposed, however, that I gravely subscribe to it:—"A large majority of the people of this Union are confirmed in the conviction of the fallibility, infirmity, and errors of this supreme tribunal. This branch of the General Government must henceforth stand, where it always ought to have stood, in public estimation, as being liable to all the frailties and weaknesses of erring man." ! !

Beyond this we cannot predict the consequences. Whether an attempt at impeachment will be made, it is impossible to say. Whether the judges will resign their office, is yet another question; and how they can retain it in the face of such contempt, it is difficult to see. But I cannot agree with Governor Lumpkin, that the

venerable judges of that exalted tribunal will fall under contempt of the nation—much less of the world. Whether they shall remain in office, or not, their authority and their decision will yet have their influence; and no other court of sober men, it is believed, will ever presume to act differently in the same place, if they shall have occasion to adjudicate the same question. The case is now made plain, and the public opinion of the nation and of the world is rapidly forming, and ere long will demonstrate itself, to affirm for ever the decree of the Court already passed, and consign to merited infamy the doctrines of usurpation.

But what will become of the Indians in the mean time, and how the Federal Republic will bear the shock of such disaster, falling on the heads of its Judiciary, remain to be determined—and may justly be a subject of anxiety.

CHAPTER VI.

CONSIDERATION OF GEORGIA'S PLEA IN JUSTIFICATION OF HER COURSE.

BUT is it credible, that the State of Georgia has been guilty of all these outrages? that having so long and in so many forms acknowledged the separate political existence of the Cherokees, and concurred with the General Government in so many solemn treaties, recognizing and guaranteeing their national rights of territory and self-government—is it credible, that the State should at last turn round, and deny those rights, and violate the obligations of treaties, break down the government and institutions of the Cherokees, throw over them the jurisdiction of the State and enforce the operation of a new and special code of penal statutes, imprison their religious teachers, and annihilate every vestige of their political and

civil economy?—that they should put themselves in a position for resisting, by force of arms, all attempts of the Supreme Judiciary of the nation to rescue those Indians from such apparent usurpation?—that the Supreme Executive of the nation should favour their designs, and support their pretensions? Is there no show of apology for all this? Is there no more conscience in Georgia?—no more respect for the opinion of mankind?

I declare myself not unwilling to find and make the best vindication, which the whole history of the case will afford. I would gladly do it; not only for Georgia, but for the credit of civilized society. It is due to Georgia, along with the publication of these enormities, (for enormities they certainly are) that the fairest possible statement of the grounds of her defence, should be made. After attentive observation of these transactions for some years; more especially since they have agitated the public mind; I have looked for the vindication, and will freely and fully state what it seems to have been. I should be glad, if I had the public documents to quote from; but lacking them, I will endeavour to present the most generous aspects of the case, which I believe are in substance, as follows:—

In 1802 Georgia relinquished her claims to the General Government, over the large territory on her west, which now constitutes the States of Alabama and Mississippi; and as one of the considerations in return, the Government of the Union "were bound," as Judge M'Lean says (see Appendix) "in good faith to extinguish the Indian title to lands within the limits of Georgia, as soon as could be done peaceably and on reasonable terms;" and of course to put Georgia in possession of those lands. The language of the judge, here quoted, we believe, is nearly, or quite a *literal* expression of the clause in the original document, defining the obligation of the General Government.

Georgia had certainly relinquished a very valuable consideration, and had an undoubted right to an equivalent. If the Cherokee country, lying within her own chartered limits, was the only consideration to be received in turn, it was little enough in any legitimate way of bargaining.* And the contingency, "as soon as could be done

* As to the propriety, or morality of such bargains: viz. for two States to assume by anticipation, as a *material* of negotiation, the territory of a third and defenceless power; first, because it is for their own advantage; and next, because they think they have the means of accomplishing their object without apparent violence;—it must be confessed, that the

peaceably, and on reasonable terms," was considered, at the time of the negotiation, too trifling to be held of any account. This condition was suitable and becoming;—as it would have been regarded, and would in fact have been, an outrage on the rights of the Cherokees, not to leave them the choice of selling, or retaining. Although I am ignorant of the exact endeavours, made from time to time by the General Government, to fulfil this engagement, by negotiating the land from the Indians, we will allow all that Georgia claims, viz. that it *might* have been done. I believe it might. But for decency's sake, it may be supposed, that the Government did not like to be too urgent—did not like to appear to *drive* the Indians away. Georgia *urged*—but the Government was slow. In process of time unexpected difficulties arose. The project of civilizing the Indians obtained a stronger hold of the public mind. And as the

appearance of it is not good. And it is still worse, when it appears that the only way to accomplish their object, was to keep the Indians in ignorance; and that the only reason why they have not succeeded, is, because the Indians have become more enlightened. The great sin, which Georgia has to complain of, it would seem, is, that the Government and others have contributed to raise the Cherokees above barbarism, and thus qualified them to see their own interest. But at present we have only to do with facts.

Cherokee nation was one of the most conspicuous and important of the Indian tribes, public attention was particularly directed towards their improvement among many others.

"In a letter addressed by Mr. Jefferson to the Cherokees," says Judge M'Lean, "dated January 9th, 1809, he recommends them to adopt a regular government. He points out the mode, by which a council should be chosen, who should have power to enact laws; and he also recommends the appointment of judicial and executive agents, through whom the laws might be enforced. The agent of the Government (of the United States), who resided among them, was recommended to be associated with their council, that he might give the necessary advice on all subjects relating to their Government. In the treaty of 1817 (a treaty between the Cherokees and the United States) the Cherokees are recommended to adopt a regular form of government. Since that time a law has been passed, (by Congress) making an annual appropriation of the sum of 10,000 dollars, as a school fund, for the education of Indian youth, which has been distributed among the different tribes, where schools had been established. Missionary labours among the Indians have also been sanctioned by the Government, by granting *permits* to those,

who were disposed to engage in such a work, to reside in the Indian country.*

"That the means adopted by the General Government," continues the judge, "to reclaim the savage from his erratic life, and induce him to assume the forms of civilization, have had a tendency to increase the attachment of the Cherokees to the country they now inhabit, is extremely probable; and that it increased the difficulty of purchasing their lands, as by act of cession the General Government agreed to do, is equally probable. Neither Georgia, nor the United States, when the cession (from Georgia to the General Government) was made, (in 1802) contemplated that *force* should be used in the extinguishment of the Indian title; nor that it should be procured on terms, that are not reasonable." See Judge M'Lean, Appendix.

And so it happened, under the patronage of the General Government, and by the aid of the benevolent, that the Cherokee nation in Georgia actually organized a government, with the customary forms of civilized society, established schools, enjoyed to some extent the ordinances

* It was under this regulation, that Messrs. Worcester and Butler were labouring among the Cherokees, with the approbation of the President of the United States, when they were arrested and imprisoned by the authorities of Georgia.

of Christianity, had a printing-press and a literature of their own, published a weekly paper at the seat of Government, (New Echota) partly in their own language with their own alphabet, and partly in English. And it also happened, that they grew more and more unwilling to sell their country and remove—until it seemed to be decided, that they would never go, unless they should be forced.

Still the General Government "were bound, in good faith," and by contract with Georgia, "to extinguish the Indian title to lands within the limits of Georgia, *as soon as could be done peaceably, and on reasonable terms.*" But the time had now arrived, when it could not be done "peaceably" on *any* terms. And this, if I mistake not, is the substantial and the fair history of the case.

And what results? Why, evidently, that Georgia has a fair, a *bona fide* claim on the General Government for indemnity—an indemnity to be settled and awarded by negotiation and on equitable principles. Since the Cherokees refused absolutely and utterly to sell, there was no power on earth, that could equitably force them. They had as good a right to remain where they were, and undisturbed, as the people of Georgia, as the people of the United States,

as any other people have, to remain unmolested and at their will in their own possessions, and under their own government and laws. Admit, that the United States had neglected their duty to Georgia—are the Cherokees to be punished for this offence? Admit, that the United States *could* have purchased out the Cherokees, "*peaceably* and *on reasonable terms*." They undoubtedly *might* have done it, in some such way, as they have done and are accustomed to do with other tribes, without the *appearance* of force—and perhaps in a way, as fair as is common, by one persuasive, or another. But it was *not* done. And the controversy, both in law and equity, is between Georgia and the National Government.

But what is the course which Georgia pursues? Why she says: It was agreed and fairly understood, that the United States were to purchase this territory for us, and they might have done it. *We have therefore a right to it, and will have it.* This is the length and breadth of the argument of the case; and this is the *right*, under which the State of Georgia has crushed the government and institutions of the Cherokees, thrown over them and their country her own jurisdiction, and parcelled out their lands to her own citizens by the chances of a lottery wheel!

CHAPTER VII.

STATISTICS OF THE NORTH AMERICAN INDIANS, &c.

As some demand has been made upon the sympathies of the reader in the foregoing pages of this and the first volume, in behalf of the unfortunate race of American Aborigines, (for unfortunate truly they are,) it is proper, that we should be informed of their numbers—although it is hoped his kind regard for them will not be measured by such an accident, unless, as is very suitable, he shall feel for them so much the more, as he finds they have dwindled away from a once numerous and formidable people to an inconsiderable remnant, no more to be dreaded for their influence, or prowess. Time was when they were feared, when they might have swept the European settlements into the sea, and retained an exclusive possession of the American continent, even to this day; and that, too, in spite of any

probable efforts that would have been made, had they been united in counsel, or anticipated the cruel treatment, themselves and their children were destined to receive. They were formidable for ages, and some of their tribes have been able to maintain war against the whites, even since the United States became an independent Government; and have treated with that power, in stipulations for peace, on a footing of equality, and on terms of mutual privilege and respect, such as is commonly rendered by one civilized state to another in similar transactions.* Formal and solemn treaties have been entered into, by which the relative rights of the parties have been specified, and guaranteed by the faith of the covenants.

But the Indians, in immediate contact with the whites, have been gradually declining in numbers and importance, while their civilized neighbours have been constantly multiplying, and spreading themselves out with unexampled rapidity; until the former have ceased to assert their original prerogatives of independence, and been themselves thrown entirely upon the faith of treaties, existing between them and the governments, with which they have become connected,

* See Appendix.

or upon the generosity of the community. Some tribes have lost existence altogether, and are not to be found. All the powerful nations of the East, (we call them powerful in comparison with other tribes,) that were found there in the former periods of the seventeenth century, have dwindled, some to a few scores in each tribe—and none of them are reckoned by thousands. The estimate for New England two years ago was 2247, comprehending the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut. The State of New York, at the same time reckoned 5184. Most of the States have a few Indians. The largest tribes east of the Mississippi river are in the south, in the States of Georgia, Alabama, and Mississippi. And the whole number east of the same boundary, according to the estimate of Dr. Morse in his report to Congress in 1821, was 120,346; west of the Mississippi at the same time, 350,780; making in all, within the jurisdiction of the United States, from the shores of the Atlantic to those of the Pacific, 471,126.

I am aware, that more recent reports to the American Congress have somewhat reduced these numbers. But I confess myself a little jealous of statistics on this subject, made out by authorities, which felt an interest in reducing

the numbers as low as possible; as if their comparative importance, and the value of justice distributed to them, were to be measured by the number of individuals, belonging to their race. The writer in the North American, with whom we have had to do in another place, professes to quote the latest public documents, relating to this point, in the War Office; and makes the total of Indians in all the States and territories of the Union, 312,040—of whom 104,971 are to be found east of the Mississippi. The difference in the grand total between this statement and that of Dr. Morse, is 159,086; and nearly 16,000 less on the east of the Mississippi. Considering, that the Indians could not, in any probability, have decreased much within the last ten years; considering the confidence due to Dr. Morse's opportunities of information, fidelity of research, and long custom in the common tasks of a geographer; regarding the Reviewer's obvious and apparently great anxiety to detract in all possible ways from the importance of the Indians; and presuming, that this is the common *esprit du corps* of all, who have been recently and officially concerned in Indian affairs of the United States; I take upon myself, for such reasons, the liberty of reposing more confidence in the greater number, than in the less.

And inasmuch, as there are numerous Indian tribes, in the western regions of North America, as yet but very little known, and the difficulties of obtaining an accurate census, from the nature of the circumstances, being very great, we are perhaps justified in concluding,—that there must be at least a *half-million* of Indians within the jurisdiction of the United States. Allowing an equal number to the British dominions of North America, (whether there are more or less I am unable to say) *one million* of American Aborigines, the remnants of ancient and powerful nations, worthy of respect, at least for what their ancestors were, scattered over the territories of the United States and British America, their pride humbled, their spirits dejected, forced from the graves of their fathers, and doomed to wander without a resting-place; the white population perpetually crowding upon them, and pushing them backward still, until they are threatened to be driven into the Pacific Ocean, or extinguished for ever as a race from off the face of the earth;—*one million*, we will suppose, of these immortal beings, supplanted by Europeans and their descendants, ejected by violence from the territories, which their fathers, as themselves say, received from the Great Spirit, (occupied certainly by them from time immemorial) denied a voice in

the perpetual mutations, to which they are doomed; — *one million*, probably of this depressed and oppressed people now rest upon the charities, and appeal to the generosity of citizens of the United States, and of the British dominions, to defend them from injury still meditated, and to rescue them from their political and social disadvantages—to save them from utter annihilation. I had almost said, they appeal *from* such charity and *from* such generosity, which as yet have rendered unto them nothing but the fruits of injustice and oppression. Time waits—or rather time rolls onward, to demonstrate in its flight the virtue of these two communities:—whether they will repair the injuries they have done. The British Government have been neglectful; — the American Government have been more than neglectful:—they have outraged decency in this particular, and put the worst and most intolerable forms of despotism, modern or ancient, to the blush. If I do not however mistake the age, in which we live, and the character of the communities made responsible for these injuries, the knowledge of these facts can hardly fail to exercise and put into operation a remedial influence and remedial agencies.

Although it is more than two hundred years, since these injuries began to be inflicted, and the

same original and fatal policy, continuing from that time to the present, exercising the same controlling and desolating influence, directly in face of the world—yet the world, especially those whom it concerned, have never found time to turn and look at this spectacle. The British and American communities do not know what they have done, what they are doing, and what they are responsible for!

They know generally, that the American continent was once covered with aboriginal tribes; that those tribes have been displaced and driven backward by an European race; that many tribes have become extinct, and the remainder greatly diminished; but they have never given themselves the trouble to inquire into the causes—they have never yet learned, that their fathers and themselves are responsible for this alarming and rapid decline of these ancient nations.

The haste of the writer, whom we have had occasion to examine at length in two former chapters, to accomplish a political object, has betrayed him not only into an open avowal of principles, more becoming a former than the present age; but he has stumbled also upon a false philosophy, and would have the world believe, that the nature of the Indian is incorrigible. He is equally at fault in fact and

theory. He has libelled the Indian, and libelled mankind. And it was natural enough, to be sure, since nothing could justify the assumptions, which had been made, and which this writer advocated, over the Indians, but a previous assumption, that the Indian is not only a savage, but a brute; yes, it was natural enough on such premises to deduce such a conclusion. But it was in the face of fact, as we have shewn; it is against the philosophy of human nature, as needs no proof. The American Indian is a man, and other things being equal, is as susceptible of improvement, as any other species of the human family. Philosophy would teach this; fact has proved it. And the reasons for the decline of the Indian tribes, and for the steady diminution of their numbers, will undoubtedly be found in the cruel hand of injustice and oppression, which has so steadily been laid upon them, which has so steadily pursued them. It is adding insult to injury to declaim about "the treasure, and labour, and care," which have been in vain wasted upon the Indians. What could a few individuals, labouring and dying for the Indians, do against the world? The original and desolating policy of the European nations, which first made settlements in North America, and with slight modifications, the policy of the United

States, growing out of it, has been sweeping over the Indians for two whole centuries, like a besom of destruction.

But suppose, that instead of *one million* of Aborigines now left in North America, including those in the British dominions and in the United States, there are not more than 750,000; or even not more than 500,000, equally divided between the two empires. For myself, I believe the number cannot be less than the highest of these computations. But suppose it be the least. What then? Are the obligations of the citizens of the United States and of Great Britain (for I insist, that although Great Britain is not so deeply involved in the guilt, yet is she not altogether clear)—are the obligations of these powers towards this unhappy people to be estimated in the inverse ratio of the injury they have done them? Because their treatment has reduced the Indians to such small remnants, does it become them to say, that the Indians are not worth saving? *

* My apology for coupling Great Britain with the United States in this chapter, is, that I have thought it proper to make a general, though I do not profess that it is a minutely accurate, numerical statement of the Indians of North America, nearly an equal moiety of whom, it is supposed, are in the British dominions. Great Britain may indeed bless herself, that she is not involved in an equal condemnation with the United States, by an equally injurious treatment of the

Indians. And I have been glad, as before expressed, to witness the vindication of British policy in this particular, made by Chief Justice Marshal. (See Appendix.) But still there is hanging from her shoulder and attached to the skirts of her garments, no trifling responsibility. The vindication after all is a work of some degree of elaboration, and effected only by construction. It is limited too. The first charters and patents of the British crown, thrown over America, were evidently as strong, as those which came from Spain, and Portugal, and France. Vattel has felt himself obliged to vindicate even these *latter*, as we have seen: "People (the powers) have not then deviated from the views of nature, in *confining* the Indians within narrow limits,"—says he. At the same time he praises the gratuitous negotiations of the English Puritans and William Penn with the Indians, "notwithstanding their being furnished with a charter from their Sovereign," which, it is taken for granted, from the well-known character of these instruments, was charged with powers, which might dispense with negotiation. It is from such authority of example, and as is assumed, of settled law, that some American republicans affect to defend their own usurpations. We are most happy to find, that Judge Marshal has wrested that vindication entirely from their hands.

Great Britain is responsible, too, for her *neglect* of the Indians within her jurisdiction in America. There are no proofs, indeed, of the same ostensible aggressions upon their rights, as in the United States. But still the relative influences of the worst things found in civilized society, operating upon the Indians, while unprotected, are just about the same, and equally destructive, in the British North American provinces, as in the United States. And although it would appear from Judge Marshal's argument, that Great Britain acquitted herself honourably in the exposition and management of her relations with the Indians, previous to the independence of the United States; yet we are well informed, that the Government of the Canadas assumes the right and takes the liberty of removing the Indians at pleasure, without

consulting their will. While, therefore, these strictures are principally confined to the policy of the United States towards the Indians, I should be disappointed of one great purpose, if my British readers were permitted to forget, that they also are burdened with a weighty and momentous responsibility, in regard to the same race. The Indians in British North America are wasting away—they are perishing—if not by the influence of direct political measures, yet certainly by neglect, and by the active and devastating tendencies of those vices of civilized society, which are always the first and almost the sole influence, that reaches them, while they are left unprotected.

CHAPTER VIII.

HISTORY OF THE INDIAN-POLICY OF THE AMERICAN GOVERNMENT.

It is perfectly true, as the writer in the North American Review has said: "that the position occupied by the Indians is an anomaly in the political world." And it is no less true, that it is political crime, which has created this anomaly, and nourishes and sustains it. And the statement, which the Reviewer has made, as a doctrine deduced from this fact, would have been far more honourable to himself, and exactly historical, as indicating the course of treatment, by which this "political anomaly" had been brought about, if, by a little change of form, it had been advanced as *history*, rather than as *doctrine*. He says: "The questions connected with it (with this anomaly) are eminently practical, and depending upon peculiar circumstances, and

changing with them." Or, in the historical form: The practice, or policy, which has been applied to the Indians, has *produced* "peculiar circumstances," and compelled a constant change of policy to meet peculiar exigencies. "Depending upon peculiar circumstances, and changing with them." "*Changing*," alas! changing—and changing for ever. What form of despotism ever failed to find some form of apology? And what people, what state of society, civilized or barbarous, can resist the desolating influence of a perpetual change in the policy by which it is governed;—and that policy imposed by a foreign hand to accommodate foreign interests? What state of society can outlive the application of a different code of morals to its administration in every succeeding generation? No society on earth, no nation or people—not even the dominion and throne of the eternal One, could withstand the ravages of such an influence. "The position occupied by the Indians is an anomaly in the political world; and the questions connected with it are eminently practical, depending upon peculiar circumstances, and *changing with them.*"!! The *anomaly* is an undoubted fact; and the statement of doctrine, deduced from it, comprehends the exact history of events, which have *created* that anomaly.

Let us see:—When, for example, the new world was first discovered, "the question," we suppose, "was eminently practical," how the beings found there in the forms of humanity should be treated. If the old-fashioned system of morality, embodied in the second table of the Decalogue, and generally acknowledged, at least in form, in the social system already established in christian Europe, and professed to be maintained by "civilized and christian kings," had been thought good enough for the "practical" purposes of taking possession of this new world,—it is imagined, there would then have arisen no "peculiar circumstances." Things might have gone on in the old way, on the footing of the ancient social system. But men and kings ran wild in those days, under the influence of wild expectations, rising and clustering in the wild prospects of the wild regions of America. The "circumstances" were "peculiar." It seemed fit, that a race of wild men should become the subjects of a new and wild law of political and social morality. All the "questions," arising out of the junction of those "peculiar circumstances" were "eminently practical," and must needs be subject to the necessity of "changing with them." They who take by violence, who make war upon the rights of men,

under no other provocation, than the cupidity of wealth, or the passion of self-aggrandizement, or the lust of dominion, or under all these motives combined, must provide for those exigencies, which their violence shall have created. If it induces a train of "peculiar circumstances," as it unavoidably will, they must adapt their policy to the continuously changing aspects of the "circumstances." And so they did. They took possession of America by violence; they *created* "peculiar circumstances." They abandoned the old system of morality, and introduced a new one—as if the new world were a fit subject of such a novel experiment. It will be understood, that I here refer to the primitive charters, applied to America, which asserted original and unqualified jurisdiction. *Here* is the origin of all the mischief — a mischief stamped upon that world from those days to the present, and operating still with a desolating influence. There is no law so imperious as *precedent*—no authority so influential as *example:*—it will shame morality out of countenance, put decency to the blush, and wash away the stains of the deepest crime. That leaven infused itself through all the regions of the western world, and corrupted the entire atmosphere, which hangs over the American continent.

It is true, as Judge Marshal has proved, that the conscience of Great Britain did not permit her own practical policy to extend to the limits of these original charters; that she allowed the Indians all the rights which are now claimed by themselves and their advocates; and expressly instructed her official agents and American governors to see, that her will in this particular should be sacredly regarded, in all intercourse and dealings with the Aborigines. "These questions, eminently practical," were practically solved in those days, under the instructions and by the authorities of the British crown, on the basis of equitable principles. And this is an honour to the Government, well deserving to be recorded. And notwithstanding there have been and still are great and serious evils, operating on the Indians under the jurisdiction of the British empire, through neglect, as we have before noticed, and urgently claiming attention; yet I am not aware that the proper rights of that people have ever been violated, when the conscience of the British community has been brought to bear upon them in acts of public and official responsibility, immediately connected with the throne—the original charters and patents always excepted. And since, by her own expositions and practical

application of the true meaning and intent of these instruments, consistently maintained in the history of the administration of her relations with the American Indians, she may be considered as having atoned the fault and wiped away the scandal of her "original sin;" it is not only unfair to accuse the British Government of invading the rights of the Indians knowingly and willingly;* but it is a gross violation of all rules of forensic interpretation and of political integrity, it is inglorious, it is a manifold cruelty, for another power, to overlook these expositions, and this uniform application of those charters by that authority which framed and promulged them, and to appeal to the *letter* of them for a warrant to rob the Indians of their territorial rights and political existence, and to wield over them an absolute and despotic control. And yet is this a fact.†

It will be seen by a reference to the argument of the Supreme Court of the United States, that not only the avowed, but the practical policy of the United States towards the Indians, from the time that Government was

* It is presumed, that the practical assumptions of the local governments of the British North American provinces over the Indians, before alluded to, will not be sustained by the advisers of the Crown. It demands to be looked to.

† See Chapters III. and IV. of this volume.

organized and succeeded to the government of Great Britain, received its shape from the practical policy of the previous administration of the colonies under the crown; and that it has never been violated and changed until recently. The proof of this is an accumulation—a mountain of evidence. All compacts between them and the Government of the United States have been made under the name and in the form of treaties—and treaties in the ordinary sense of the term, distinctly recognizing their separate political existence, their territorial rights, and defining and guaranteeing to them all the privileges of sovereign and independent communities. We refer to the argument of the Court.

But the "peculiar circumstances" of the Indian tribes have been gradually changing. Those in New England have dwindled away, until they have been unable to maintain the privileges of independence, which in principle have always been allowed to them; and have gradually fallen, by choice as well as necessity, into the hands and under the care of the respective States, in the bosoms of which they were found. I am not aware, that any legislation has ever yet been exercised over them in that quarter by assumption against their own will. They are few in number, not a single tribe amounting to a

thousand, some running as low as three and two hundred, and in one or two instances, to fifty; altogether dependent, and resting on the parental care of the States. In the State of New York the tribes are comparatively more important, have maintained their original relations with the General Government, under modifications agreed to by both parties; but having become surrounded and in close contact with the white population, for mutual protection the State Government have felt obliged to enact regulations to meet existing exigencies; but have never done the violence of asserting, or assuming original jurisdiction. I am not aware, that the New York Indians, as a body, complain of the encroachments of State legislation. A nice political casuist, however, would doubtless take exception at the claims of the *pre-emption* right, as it is called, thrown over the Indians of the State of New York—more especially at the actual operation of those claims, under their existing economy.

The numerous Indian tribes and their extensive domains, in the new states and territories in the west and north-west, and east of the Mississippi river, have remained in immediate connexion with the General Government, under the customary form of treaties. Recently, however, since the policy of *removal* has been

operating upon the Indians generally, they have been selling off, or I might perhaps with greater propriety say—they *have been bought out*, with great rapidity, and preparing to remove beyond the Mississippi. I say—*have been bought out*. For I cannot in conscience affirm, that I think the Indians are, in the proper moral sense, a *party* in these negotiations. They are *persuaded*, by one means or another, to put their *marks* to the deeds of conveyance.

But the great strife of *principle* has arisen and been brought to a crisis, by the determination of Georgia to take possession of the Cherokee country, and eject its ancient tenants. All minor and gradual encroachments on the rights of Indians, in different quarters, have either been winked at, or overlooked. Individual persons, or corporate companies, or States, negotiating with Indians, if their interests have tempted them to trespass on the rules of justice or propriety, have been careful to do it under such forms, or so gradually, as if possible to avoid the loud complaints of the Indians, and escape observation. They have always been afraid to shock the public mind.

But when the resolution of Georgia had been taken, and began to be evolved; when these startling claims were first announced, the world

did not believe it. It was not thought possible, that a community of civilized and enlightened men, that the leaders and authorities of such a community, could entertain such a project. Could a State, an integral member of the American Union, herself a party to the public engagements of that Union, think of violating its treaties with a second party? Could she think of invading rights, so long acknowledged and solemnly guaranteed, and which had never been questioned? Should she presume to break the faith of the nation, as well as her own? Might she annihilate, with one sweep of her hand, all those rights of the Cherokees, which had been surrounded and defended by such muniments of international compacts and pledges? The world were authorized to disbelieve it; no man would think of admitting such a libel on a Christian community.

But when in 1829 Georgia gave demonstration of her earnestness by her acts of legislation in relation to the Cherokees, these astounding facts were all before the world! Common injuries done to the Indian tribes dwindled into insignificance, were not seen, in view of this atrocity. It seemed the climax of infatuation—the very height of madness. And yet it was a fact—we cannot say, a *sober* fact—but a fact. The avowed

and practical policy of the National Government in relation to the Indians — the only just and honourable policy — a policy uniformly maintained under the crown of England, renewed and sustained continuously under the United States, till this time—was *revolutionized*, as in a day. The nation, the world were taken by surprise—and will never cease to be surprised. The more it is seen, the more it will be detested and abhorred. It is alike shocking to every recognized principle of political and social morality.

Admitting, that all the public engagements between Indian tribes and the United States had been indiscreetly made, and called by improper names; admitting, that the social state of the Indians is a condition of minority, which renders them incapable of being a party to such transactions; yet which is the party, that may take advantage of this minority and incapacity, in law or equity? The engagements have been made—the engagements exist—and the Indian claims the benefit of them. Shall the white man say: The engagement is nothing? That it was made not to bind, but to satisfy for the time? And will it be believed, that this *has* been said—said publicly—said officially:—that all these engagements with the Indians have no binding force in them!—and said for this very object!

And is this the sense, in which "the questions" growing out of "the position occupied by the Indians in the political world," are "eminently practical?" "*Eminently*" so,—*so* "eminently," that we may break our engagements with them? Is this the sense, in which those "questions" "depend upon *peculiar* circumstances, and *change* with them!" "The mode of acquiring the possessory right of the Indians is a question of *expediency*, and not of *principle!*" Alas! we live in sad times, if it must be supposed, that the morality of the world has come to this! And yet such is the policy, now under discussion, in relation to the Indians! It was not so *once*—it is so *now!*

CHAPTER IX.

CONSIDERATION OF THE MERITS OF THE SCHEME OF REMOVING THE INDIANS, &c.

WHEN we consider what were the exigencies, which suggested the scheme of removing the Indians, and who were its authors, suspicion fastens at once upon its character, and demands a scrutiny. The exigencies were: that the Indian lands on the east of the Mississippi had become valuable to the whites, and were wanted for improvement. The authors of the scheme were those, who had thought it necessary to get possession of these territories. That this is the simple and substantial history of the origination of this project, is very easy of proof. Indeed it is self-evident. For the moment the inquiry is raised: Who were the authors, and who are the advocates of this measure, nobody thinks of looking for the answer any where else, but into

the ranks of those, who are interested;—interested in gaining possession of the Indian lands, or interested by political relations. Those, who have been patiently labouring for the improvement of the Indians, for their civilization, and for the introduction of Christianity among them; whose agents, living and moving in their society, and who may fairly be supposed to have had the best opportunities of knowing them, and who have reported their condition from time to time, historically and hypothetically;—all these agents, and their societies and patrons, comprehending a very large portion of the American public, and who are perfectly disinterested, if any such can be found, are so generally opposed to the plan of removal, that it may be said—they are unanimous. The result of this particular point of the inquiry brings us to this: That the *benevolent*, and consequently the disinterested, are opposed to the removal; and that those who want the lands, together with those whose political interests have become involved in the scheme, are in favour of it. It is true, that this latter class also make pretensions of benevolence. But as their kindness had never distinguished itself in this channel before, it is, to say the least, more doubtful, than the disinterestedness of those, who, by a long and unbroken career of

self-denial and sacrifice, have devoted themselves to the improvement of the Indians. I say then, that the plan for removing the Indians, originating from such a quarter, sustained by such advocates, and withstood by such opponents—is suspicious on the threshold.

Next, let us examine the project, as a naked theory.

First, it is neither more nor less, than breaking up whole communities from their accustomed place, condition, circumstances, and relations; and transferring them into others, to which they are entirely unaccustomed. Experience proves, that civilized colonies, emigrating from civilized communities, may improve their condition. The history of the American colonies, composed of European emigrants, demonstrates this; and so also the hordes of emigration, which are constantly abandoning the Atlantic shores, and penetrating into the western wilds of America, and spreading themselves over the wide valley of the Mississippi. They *improve* their condition. But who are they? and what *was* their condition? They are generally the poor; the oppressed; who have been born without fortune; or whose fortunes have been broken down. They go to seek and make a fortune, by their enterprise and industry. And the provisions they make, if

successful, are rather for posterity, than for themselves. Themselves are doomed to self-denial, and to the most disadvantageous and painful sacrifices. Such was the character, and such the doom of the early American colonists. But they carried with them the arts of civilization—the means of creating wealth in the midst of the inexhaustible sources of wealth. They carried the Christian religion, in its purity; and compared with barbarism, they carried refinement. They carried an indomitable spirit of religious, and of a lawful worldly enterprise. They carried the protection of the sovereigns, from whose dominions they emigrated. They were armed, in short, with every possible facility, and what is more, with a moral courage adequate for the attainment of their object. And they did attain it; but not without difficulty; not without a long and dubious struggle. Ages of self-denial and of sacrifice rolled away, before it could be said they had gained any real advantage, except that of enjoying their religion without molestation. And even now, European travellers are returning every year, and reporting—certifying to the world on this side of the Atlantic, that they have even degenerated into barbarism! But allowing some degrees of caricature to these representations, (which is undoubtedly necessary

to come at the truth) it would still appear from these authorities, that after all, they have attained no very enviable condition of civilized society; that in the secure and permanent state of things, which they have succeeded in establishing, they have not only lost all ideas of the better manners of Europe, whence their fathers emigrated, but are full proof against all the generous hints of these benevolent foreigners, and absolutely incorrigible! It is enough for our purpose, however, to have shown, that with all these advantages, it has taken them a long time to arrive at a comfortable condition.

Consider next the fact and system of domestic emigration from east to west, which has been some time in progress in America, and which is still advancing on a large scale. The same general features characterize those enterprises, that marked the emigration of the first colonies from Europe. The emigrants are generally poor and depressed; they are doomed to great self-denial, to formidable hardships, and to immense sacrifices of the advantages of an old and established state of society. And yet have they every facility of a government, under whose immediate wing they reside; they make a part and parcel of the great social fabric of that government; the land is sold them for almost

nothing; the susceptibilities of the soil are easy and incalculable; the waters and streams, connecting them with the great commercial emporiums, lie every where at their feet; and yet the condition of the first generation of new settlers, in the wilds of America, is by no means to be envied. All they can say is: they have provided for their children the means of subsistence, and if well husbanded by them, the means of future wealth. And it is at least difficult to say, when, if ever, this new condition of society will enjoy the advantages and refinements of that state of things, which was abandoned by these emigrants. It is always true, all the world over, that the influence of emigration upon society, is a retrograde march. It cannot be otherwise; and it is always expected. It is a supposed necessity that urges it, and the hope of attaining other paramount advantages to balance these sacrifices. Emigration is, or always should be, voluntary. Whenever it is forced, it loses that name and character, and becomes banishment—a judicial penalty; such for example, as the emigration from Great Britain, which has peopled and is rapidly forming an empire on the continent of New Holland. Aside from this, we are not aware of a *forced* emigration in groups from any part of the civilized

world—that only excepted, which is now under review.

Since, therefore, it is obvious, that civilized people always deteriorate in the condition and character of their society, even by a *voluntary* emigration, with all the advantages of their moral courage, and of the political, social, and religious institutions they carry with them; what is to be expected from rooting up whole tribes of American Indians *against* their will, and translating them into unsurveyed and unknown regions? The pretence is, let it be observed, to *improve* their condition. The project cannot claim a graver name, than *theory*—an *experiment;* and is to be tried by the common probabilities suggested by experience and the nature of the case. We have seen, that all *common* experience is against it. Human society, to be improved, must be *fixed.* A single emigration of any fraction of a civilized community into a wild region, is quite enough to break up the common workings of society, and almost to dissolve it into its original elements. The habit of migration would reduce any society to barbarism. And whether the American Indians are a part of the lost tribes of Israel, or not,* their barbarism is undoubtedly to be attributed to habits of migration. Man-

* See Chapter I. of this volume.

kind cannot endure it, without a miracle, and retain the forms of civilized society. A single step, as we have seen, breaks up this organization to an alarming degree.

What then are "the *peculiar* circumstances," if any, in the condition and relations of the Indian tribes on the east of the Mississippi, to counteract these ordinary tendencies of an emigration, and to recommend the measure, as likely to be for their advantage? Are these Indians as bad as they can be, and therefore beyond the reach of deterioration? And if so, or in any case,—is the removal calculated to better their condition?

It is undoubtedly true, that "the position occupied by these Indians" in the United States, "is an anomaly;" that "the circumstances" of their case are "peculiar;" and that "the questions," arising from a consideration of the best mode of treating them to their own advantage, are "eminently practical."

As it would not be decent for the authors and advocates of the project of removing the Indians, to assign no other reason than this: "We want their lands;" it has become necessary for them to allege, that it will be better for them. On them, of course, devolves the burden of proof; and as the proof must necessarily await the event

of the experiment, we could wish, that they alone were doomed to bear the hazard and the responsibility of the measure. All the ordinary influences, operating for the improvement of human society, we have seen, are not only endangered, but greatly diminished in their force, by emigration. And I take upon me to say, that the project now under consideration, is not only egregiously unjust, but the wildest and most utopian, that ever entered the brain of men, who claim to be sober.

It is unjust, first, because it is compelled to the necessity of a forcible ejectment of other tribes, to make room for these; it must push the remote and wilder Indians, back upon the grounds of their neighbours, and in all probability—of a moral certainty—lead to irremediable and exterminating wars. Or if it does not force them back, it takes at least a forcible possession of their territory, and deprives them of their rights. It must necessarily bring these wild children of nature into a contact with each other, which all experience proves they cannot endure. Those who have already emigrated, have been obliged to wage, or *meet* war with their new neighbours.

It is unjust, because it compels the tribes east of the Mississippi against their will to vacate the

inheritance they have received from their fathers; and also, because it obliges them to abandon a certainty for an uncertainty, to leave a good and rich country behind them, for one, the character of which is generally unknown, and so far as known, is unsuitable and unpromising. It is greatly, egregiously unjust—it is even cruel—as breaking up all the incipient improvements, which any of them have made in civilization, in the useful arts of life, which in many instances are not inconsiderable; and subjecting them to an easy, and as may be believed from the circumstances of the case, to an unavoidable falling back into their former habits. For the improvements they have made are not old enough to be other than accidental and artificial, created and sustained with difficulty, and lost with the greatest ease, if themselves should be translated to a condition, affording unrestrained scope to the tendencies of their nature.

And this project is visionary and chimerical, or wild and utopian, as jumbling together some scores (I hardly think it can be less than *scores*) of different nations and languages — many of whom in their ancient relations, still remembered, have indulged nothing but irreconcileable enmity, and waged interminable wars;—and this, too, with a view of amalgamating them into one

community, and subjecting them to one administration! I do not know the exact shape of the theory, that is to be applied to this new state of things; nobody knows; it is altogether immature. But as improvement is promised, and civilization, and a regular government, it is clear, that the authors of this scheme cannot entertain the thought of founding as many states, or empires, as there are tribes of Indians. I have distinctly understood, from the developement of the plan already made, that the substance of it is: to throw the Indians into one group, and incorporate them in one community. And if so, the picture I have just drawn, is not unfair. But who does not see, that nothing could be more extravagant, nothing more wild, nothing more hopeless? It is decreeing absolute impossibilites.

But—it is said by the authors and advocates of this plan, that Indians cannot subsist in immediate contact and surrounded with a white population; that those, who are in these circumstances, are rapidly dwindling away; and must inevitably come to nothing, if permitted to remain under the same influences; that a removal can be no worse, and is likely to be better; that being thrown beyond the jurisdiction of the State Governments, they will be under the immediate, and sole care of the General Govern-

ment; that Congress will not only secure them the perpetuity of their new possessions, but provide for their protection and improvement; and that the Executive, being fully empowered, and furnished with the means, will be able and bound to fulfil all the purposes and exigencies of this benevolent scheme.

To suspend for a moment the consideration of the *merits* of this plan, experience suggests, that the value of the faith that is pledged should first be determined. Ten years ago, as we have seen in the first volume, the North-West Territory, or the country bounded on the east by Lake Michigan, on the north by Lake Superior, on the south by the State of Illinois, and extending indefinitely west, or limited we will suppose by the river Mississippi, in that direction—was solemnly pledged, under the administration of President Monroe, and consecrated by promise, as the home of the Indians. With this understanding, and under the auspices and immediate direction of the General Government, the eastern tribes began to remove into that quarter, and commenced their endeavours to incorporate themselves with the native Indians and improve their condition, as well as to establish themselves.

It is true the value of that country was then

comparatively unknown. It had not then entered into any body's mind, not even into the plans, or conceptions of the General Government, that it would be wanted to make a *State*— a member of the Federal Union. And yet since that time, as we have before seen, the enterprise of the citizens of the States has discovered the importance and value of the country, and persuaded the Government to designate and appropriate it, as a candidate for this high destiny. We have seen also the methods, which have been employed to dispossess the eastern tribes of their new possessions there. And it may be added, that since the commencement of 1832, nearly all the lands in that vast and rich territory, the Indian title of which had not already been extinguished, have been ceded to the United States, and the tribes, thus resigning their claims, have agreed to remove into a western region.

I know of but *three* apologies, that can be made for the disappointment of the Indians, in regard to the North-West Territory, as developed in the first volume:—

One, that the value of that country, and its excellent fitness to become a member of the Federal Union, was not known, when the pledges were given. And this certainly can be no great

consolation to the Indians, so long as they must understand, that if the country to which they are to be removed, is worth having, it is equally liable to be seized, as the North-West Territory.

Another is, what may possibly be pleaded for want of a better reason:—that the pledges of Government, under Mr. Monroe, to appropriate that country for the Indians, were indefinite; and that it could never have been intended, they should be a bar to the erection of a State in that quarter, if there should be any demand for it. We have had occasion to state in a former place, that the territory, designed for the Indians, although not settled by any official authorities, was yet defined in Dr. Morse's Report to Congress, in 1822, as constituting the most natural and convenient limits, and may fairly be considered, as having the force of a recommendation from him, who was in fact an official agent of the Government; and one article of his instructions was to discharge this duty, as well as others. And a recommendation, from such a source, to which no exceptions were taken at the time, was a legitimate element of confidence and of obligation. It was all that could be expected in the case, and under the circumstances, short of actual legislation. And, that the Government did sincerely and fully intend to give a *bonâ fide*

pledge of that country to the Indians, the official documents, relating to the case, abundantly prove. Besides the immediate authorities from the President, the Governor of Michigan, who had a large discretion committed to him, in the superintendance of the negotiations, as being near and best qualified to judge, instructed the agent of Government, that it was *particularly desirable*, that the purchase about to be made by the New York tribes from the North-West Indians, should embrace a territory sufficiently extensive to enable them *to keep out the white man.* The known and declared object of the New York Indians, in going into the North-West Territory, was to find a permanent home, remote and for ever separate from white neighbours. The entire correspondence with the General Government on the subject, and all the offices rendered by Government at the time and in the matter, had for their distinct and avowed object, such an arrangement. It is impossible, therefore, from the nature and publicity of the transactions, that any doubt should arise, as to the intention and the pledges of Government, or as to the understanding of all concerned.

The *third* apology may possibly be:—that President Monroe was unauthorised to extend his pledges so far, and that the legislative authorities

never confirmed them. It may be so. But still they were pledges, given by the Government. They were publicly known to have been given. And upon the faith of them, whole tribes of Indians sold their territories in the east, and removed to the north-west. And farther: — The treaties, making the covenants between the parties on the occasion, recorded the approbation and signature of the President, and the sanction of the Senate of the United States, if the last was necessary. Whether the nature of those transactions required the affirmation of that body, I am not sure. They had, however, every official sanction, which is customary in such cases; and of course, all the public faith involved in the negotiations, was duly sealed.

The *first* of these *three* grounds of defence, which is doubtless the true one, will never be taken, for want of sufficient hardihood. We have seen how the *second* must fail. And as to the *third*, it would answer the purposes of those, who are supposed to stand in need of it, but poorly; since, if it has any weight at all, it divests themselves of all authority for the course they are now pursuing. If President Monroe had no right to give pledges of this sort, the present occupant of that chair is in the same predicament. If the former *had* the right, how

could the present chief magistrate violate those pledges with one hand, and have the face to turn round and with the other offer the same securities to the same people, who had been thus injured! All these vast changes in the relations of Indian tribes to the United States, which are now being made, and all these momentous movements, (momentous certainly to the Indians) which are going on, are all done on the faith of the President of the United States, which is as good and no better, than the faith of President Monroe, in a parallel case, which in less than ten years has come to be good for nothing to those, for whom it was pledged.

In ten years more the country *now* offered to be set apart and pledged to the Indians, may be found good enough for a *State;* and doubtless will be, if it is worth any thing to the Indians. And inasmuch as that is the real, the true reason for depriving them of the North-West Territory, what greater shame will there be in taking possession of *this*, by force of the same argument? And even though the legislation of Congress should confirm the promises made by the President in the latter case, (which by the by has not yet been done) it would afford indeed what is called the *cumulative* evidence of right; but if there be any propriety in the steps already

taken, the right is no more sacred in the latter case, than in the former.

In ten years to come it is possible, (though we hope it may never be) that a Government will be found equally bold in trampling on the pledges and securities now given to the Indians, as the present Government are in trampling on the promises made by the same authorities to the same people ten years ago. In ten years more, peradventure, it will be said, that the Government of 1832 had no right to give this land to the Indians, as a perpetual inheritance, and thus bar the possibility of erecting a new State upon the premises; and it is incredible they should have intended so to do. The Indians had their own confined reservations, and should have been permitted to retain them, on the old conditions, as much as they really had need of, and so long as any might be left to occupy them. And even admitting, that such was the intention of Government, as the record of their acts would seem to indicate, yet the improper exercise of authority annuls its obligations. Or, they accommodated themselves to the "peculiar circumstances" of the time. And as "circumstances" have changed, and presented "peculiarities" of different aspects, the "questions," arising from the "anomalous position occupied by the Indians in the political

world," necessarily and of right "*change* with them."

And really, I have no powers of discovering, why this reasoning, or something equivalent to it, such as the "peculiar circumstances" may require, will not be as good, as that which is now employed, to eject the Indians from their present possessions. It will not surely be pretended, after what has been done, that the solemn enactments of Congress will guarantee their possessions in the west. If treaties, heaped upon treaties, and existing for ages, and in every age and every few years renewed, will not bind; if all former enactments of Congress, and all the pledges of former administrations, formally sealed, to secure the rights of the Indians, may be broken; nobody should think of insulting them by the offer of new engagements.

Thus much to illustrate the value of the faith, that is now tendered to the Indians to secure their new possessions on the west of the Mississippi; especially when pledged by those, who have trampled on all former engagements with them; and who defend their measures by the doctrine:—"that the *mode* of acquiring the possessory rights of the Indians, is a question of *expediency*, and not of *principle*;" and who have had the sagacity to anticipate, and the

effrontery to say:—"We are prepared to expect, that many honest and benevolent men will be *shocked* at a proposition, which would leave it to *one* party to judge what extent of territory should be yielded by the other, and what consideration should be awarded."

I have one word more to say, as to the probabilities of improving the condition of the Indians by removal.

It is affirmed, first, that they must be removed to be *saved;* next, that they must be removed to be *improved.* Is it not a fact, it is demanded, that they are dwindling and perishing, where they are? And does not the past history of them lead us to anticipate their total extinction, under the operation of present influences?

I have before expressed my opinion, that there is no secret, no mystery in the decline of the aboriginal race of America. It is not necessary to prove, that they are not of the same blood with all other nations of the earth, that they are not *men*—to account for it. Common philosophy, common experience is sufficient to solve all the difficulties of the case. The simple and true account is this:—The Indians have been abandoned to the incursions and ravages of the white man's vices; or, barbarism has been made more barbarous, and turned to the unnatural crime of

suicide, in being inoculated with the pests of civilized society. Unprincipled and vicious men always get to them first, deal with them most, and thoroughly infuse the poison and scatter the contagion of their own vices, over a mass easily susceptible and perfectly unprotected. The parade, that has been made of "the useless expenditure of treasure, labour, and care" upon the Indians, is all declamation. There has been nothing done, worthy to be named, to confront the real evils of the case, and in comparison of the deleterious and destructive influences, which have been permitted to flow in upon them, from the scum and filth and polluted dens of civilized society.

But it is said:—that, "to rescue them from these destructive influences, we must remove them." Remove them, *where?* Beyond the reach of the white man? That is impossible, unless they are thrown into the sea. Removing them is only increasing the difficulty, by leaving them open to fresh and worse exposures, and dooming them to pass through a second time, the devastating ordeal of a *Western-border-influence*, from which they have scarcely escaped in the first instance with existence; and by means of which, not a few of their tribes have been utterly annihilated. To talk of removing

the Indians beyond the reach of the white man, might be a fit occupation for those, who sit to rehearse, or swallow the wonders of nursery tales; but it is a sad presage to the Indians themselves, that it should make a topic of grave deliberation, or become an article in the creed of those, who are entrusted with the control of their destiny.

But it is said:—"They shall be thoroughly protected." *One-thousandth* part of the expense would protect them where they are. If it were possible to remove and group together so many tribes of so many different languages, it would require, in the first place, a police, as omnipresent and vigilant as that of London, and the constant presence of an armed force, to keep the peace among them; and next, their entire frontier, be it greater or less, would demand an unbroken *cordon militaire,* that every sentinel might stand in sight of his neighbour, to prevent the intercourse of Indians and white men. Is all this likely to be done? Is it possible? And even then, in such imprisonment, the Indians would be corrupted and ruined by their immediate protectors! The expenses and difficulties of protection, if protection is honestly intended, would be infinitely enhanced by removal; it would become utterly impracticable.

Any one, who has planted his foot upon the borders of civilization and barbarism in America, and witnessed the effects of a contact between the wild tribes of Indians and that portion of a white population, which uniformly goes out and meets them first,—will only wonder, how any of the Indians can ever survive its desolating influence! A scape-gallows from civilized society becomes a prince in the bosom of an Indian tribe; and every other grade of vice and crime, fled for protection into the midst of barbarous manners, acquires an influence in proportion. And the first trading intercourse is merely another name for cheating and robbery; and whiskey is always the facility. And this is exactly the condition of exposure, through which most of the eastern tribes have once passed, and which some of them have out-lived, and into which the measure of removal would throw them back again, to experience yet again, if they should ever survive, all its fearful ravages. To talk of protection in such circumstances, is not simply chimerical—it is childish. The economical Government of America is not very likely to submit to the expense, that would be demanded, even if protection were practicable. But, as I have before suggested, if there be any sincerity in all these professions, why not, with *one-thousandth*

part of this expense, afford that protection, which *is* practicable, where these Indians now are? They are now surrounded and impaled by civilized society, and comparatively exempt from the influence and control of vicious white men. A little vigilance of the powers that be, and a trifling appropriation, would answer all the purpose. It is practicable and easy to protect these Indians where they now are; but, strange as it may seem, it has never been done. It is true, indeed, that Congress has enacted many benevolent laws for this purpose, and fully empowered the Executive to enforce them; and if the statute book alone were to be consulted, the conclusion would be, that the provisions are abundant. But the history of this code is almost entirely confined to the deliberations, where the laws originated, and to the clerk's hand, which recorded them. And if they have proved so inefficient, if there has been so little virtue in the chief magistracy and in the Indian agency, as to suffer the benevolent laws of Congress, enacted for the protection of the Indians, to sleep in their hands, when circumstances have been so favourable for their execution; what, then can be expected, of the fidelity of these authorities, when the Indians shall have been thrown into circumstances infinitely unfavourable?

In whatever point of view, therefore, the project for the removal of the Indians be regarded, it is visionary; it is utopian; it is unjust; it is cruel.

As the case now is—or rather has recently been,—for it is beginning already to be deranged and broken up by the operation of the process of removal,—and with all the laws of Congress enacted for the protection of the Indians, the President has too many other weightier cares to see to their execution; Indian agents, even when they have sufficient virtue to wish to do good, are yet for some reasons obliged to connive at the system of depredation, which the fur-trade, and other trades carried on among the Indians, and whiskey venders, have so long and without interruption sustained; the agents themselves are too often peculators in their trust, and speculators on the easy compliances of the Indians, and yielding to the temptations offered in various ways for securing their own individual wealth; so that the Indians are unavoidably left without protection, in the midst of the all-sufficient muniments of law, merely in consequence of the infidelity of the proper official agents, from the highest to the lowest! And all this while the Indians are more or less encircled by civilization.

And is it to be pretended, that things will go

better when the Indians are thrown again into the arms of a frontier influence? Will the President, whom they are taught to call father, be nearer to them, than now; or be likely to have more virtue? Will the Indian agents, whatever may be the names, forms, or powers of their office in the new state of things, be more faithful, when farther removed from public observation?

And besides, these evils had begun to be remedied—not so much, indeed, by the energy of the national administration, as by the alliance of voluntary, benevolent enterprise with the powers of state. Benevolence, having obtained the recognition and shield of the General Government, had successfully begun to fulfil the long neglected offices of the national authorities; and by this means, great strides have already been made, not only in the improvement of the Indians in morals and civilized habits, but in defending them from the inroads and influence of vicious white men. It was by this means, that all the improvements of the Cherokees, before recognized, have been effected. The stubborn difficulties, which had so long opposed the progress of benevolence, in its attempts to elevate the character and improve the condition of the Indians, had begun to disappear in various tribes; and the great secret of accomplishing these

desirable objects, seemed not only to be discovered, but in active and efficient operation. Indeed, the work of improvement was going on with such rapidity and success, that those who had long coveted the territorial possessions of the Indians in the eastern and southern parts of the United States, and who had anticipated with confidence the time of their removal, became *alarmed;* and they have found it necessary, by an amazing and violent stretch of power, to spring at *once* to their object, and astound the world, by that atrocious seizure of Indian territories, and that violent ejectment by legislation and force of arms, which has occupied so much of our attention! The Indians had learned, that their only hope of salvation, was to remain where they were, and cultivate the habits and manners of civilized life. Their enemies had learned simultaneously, in the evidence of the rapid improvement of this long neglected and injured people, that their only hope of getting possession of their lands, was to take them by violence. And hence the sudden enactment of this unprecedented tragedy. The Cherokees had been guilty of the sin of complying with the benevolent recommendations of Mr. Jefferson, and of public treaties between themselves and the General Government, and so far abetted and aided by the

concurrent enterprises of benevolence, as to have organized and put in operation a civil government of their own, and resolved to abide in their place, and retain possession of their acknowledged rights. The fate of their institutions has already been stated. They have been annihilated by the legislation and arms of Georgia. The doom of this tribe presents a more prominent example. But they are only one of many. All the incipient improvements of the Indians on the east of the Mississippi, have been crushed by the same blow; and all their rising and beaming hopes blasted by the same cloud, which has so recently come over their prospects. If any possible remedy for these disasters remains to be devised, it is as yet entirely out of sight of the wisest and most discerning. The energies of these benevolent exertions have been utterly paralyzed, and all their fruits blighted in the bud of expectation. All the advantages gained in civilizing the Indians are doomed to be buried and lost in the change, to which they are destined; and all the advancements are alike consigned to a retrograde march, to be arrested no prophet can tell when, or where. Backward they must go, if there be any light in experience; and whether to utter annihilation, is a problem, which remains

to be solved, and its results to be born in the openings of futurity.

The utter impossibility of amalgamating at once so many tribes of barbarians, of different languages, and indulging more or less of hostile feeling, needs only to be named, to be felt. The collisions, which must inevitably result from their contact; the insurmountable difficulties of framing and applying to such a group a civil policy; the project of governing them, in such a condition, either by themselves, or by any authorities imposed; the notion of an armed force to keep the peace, as well as to keep out intruders, which would be alike necessary, as the object, even by such provisions, would be impracticable;—what a community! What a government! Every form and feature of this scheme is so utterly romantic, that one might well imagine it, what in fact it is, the child of *necessity*—the necessity of *violence.*

CHAPTER X.

REPRESENTATIONS FROM VARIOUS INDIAN TRIBES AT THE CITY OF WASHINGTON IN THE WINTER OF 1830-31, THEIR APPEARANCE, OBJECTS, &c.

AFTER having witnessed the scenes described in the first volume, which occurred in the autumn of 1830, it happened to be my lot to spend the following winter at the city of Washington. As none of the difficulties, resulting from the controversy between the New York tribes at Green Bay on the one side, and the native Indians on the other, had been adjusted, by the labours of the Commissioners from Government, ostensibly sent up for that purpose; or, more properly, the controversy between the New York Indians and the white citizens of Green Bay, who had been the authors and instigators of the quarrel;—the whole matter was brought up to the Government at Washington, to be reviewed and decided

on under the immediate inspection of the President. For this purpose delegations from the tribes interested — from the Oneidas, Stockbridges, Brothertons, and others, who had originally, and some of whom still, lived in the State of New York; from the Menomenies and Winnebagoes, of the North-West Territory; and the Commissioners, who had been sent down to hold a council with them, and the history of whose doings has already been given somewhat at length;—all these parties made their appearance at the seat of Government, in the winter — the Indians to "hold a talk" with their great father, the President, for the purpose of setting forth their grievances to his ear. The Rev. Mr. Williams and Daniel Bread, of the Oneidas, were there; and John Quiny, of the Stockbridges; and some others, representing the New York Indians, whose names are forgotten. It will be understood, that the New York Indians, present on this occasion, being civilized, had nothing in their persons, dress, or manners, to distinguish them from the white citizens of the States, except their complexion, and those peculiar features and expressions of countenance, which belong to the Indian character. Most of them speak the English language in its purity. Mr. Williams I have

already exhibited, as a man of thorough education, accomplished in his manners, and acquainted with men and things, in consequence of having been much in the world since his earliest days, and not a little in the most public and active scenes of war and state, before he was a clergyman; and since that time devoted, in all possible ways, private and public, as a minister of religion and as a chief, to the temporal and spiritual welfare of his race. Mrs. Williams also accompanied her husband to Washington.

The delegations from the wild tribes of the North-West, were of a very different character. The chiefs, with their wives, sons, and daughters, all made their appearance at Washington, in their own costume; and exhibited themselves in all respects, as they do at home:—in the blanket, moccasins, gaiters, belts of wampum, feathers, paint, with sundries of tawdry and brilliant ornaments; together with tomahawk, rifle, bow and arrow, and that most and altogether indispensable article of an Indian's furniture of life and war — his pipe. A wild Indian cannot change his habits by a transfer into the scenes of civilized society. He makes the same show, and exhibits the same set of manners, in the drawing-room of a palace, as he does in his own humble cabin, or in his lodge constructed of reeds. In

some of the best apartments of Gadsby's hotel, tenanted by these Indians, they were to be found all winter, making the same sort of litter over the carpets, as they had been accustomed to make on the ground in their native lodges: boys whittling their sticks, women squatting and men rolling on the floor, bows, arrows, rifles, and other implements lying scattered in confusion, a blanket here, a moccasin there, feathers and trinkets thrown about, and all their wardrobe and portables lying in the greatest disorder. A bed they would never use, but chose to sleep on the carpet, wrapped in a blanket. And it was not a little amusing to see them make their toilet before a splendid mirror. At first, they would start back, as if frightened at themselves and their own motions, reflected there, and deliver their guttural and emphatic exclamations of surprise. Then recovering confidence, they would look again, grow wild, and start back again. Returning again, they would seem to say: — Who—what is it? Gradually by more familiar acquaintance, they began to recognize, and partly believe, it was themselves; and seemed to wonder how such a doubling of themselves, and their companions, and all the objects around them could be made. They laid their hand upon the mirror, and saw another arm and hand approach

and meet their hand and arm. Whatever motion they made, it made. "*Umph!*" they would say, and spring to another part of the room, to muse upon the wonder, or deliver an eloquent oration to their own group, equally wrapped in astonishment.* At last, however, they learned to paint their faces before this instrument, for want of the smooth and glassy surface of a river. Generally the inappropriate uses, to which they applied the various articles of furniture in their rooms, were infinitely laughable. The shovel and tongs would often minister to their ingenious works of handicraft, and then be thrown upon the carpet. The rug, perhaps, would be thrown under a table for some one, or more of the dogs, when his master did not want it for the comfort of his own limbs. The luxury of a sofa would sometimes be hazarded for its original designs—more often as a receptacle for sundry and nameless articles of their own furniture. Tables were worthy to support their tomahawks, bows and arrows, rifles, and pipes, when perchance they happened to get higher up than the floor—the last being sure to catch all that could not find a superior place, and always abounding with things

* These manners of the wild Indian before artificial reflectors, or mirrors, are to be understood as characteristic of his surprise, when first he comes to make acquaintance with them.

in confusion. A chair was seldom used for its intended purpose. A wild Indian would sit as awkward in a chair, as an elephant. The servants at first attempted to set their table somewhat in the usual way; but soon learned to leave their food, and let them manage it with their own fingers. Indeed these Indians were quite a curiosity, in doors and out. They love their own fineries of dress, and although apparently careless and unobservant of attentions, they are yet not insensible when they attract them. Like other people, having made their toilet in their own best fashion, gaudy and fantastic enough, they will parade the streets, to be *seen*, as well as to see.

And there were *other* Indians at Washington, in the winter of 1830-31—some from the west, and some from the south: Cherokees, Creeks, Chactaws, and Quawpaws; and I believe some others, whose names I cannot recollect. The winter, at the seat of Government of the United States, always makes a shew of representatives from the aboriginal race—not to legislate in Congress—but lately (we are sorry for the occasion) to petition for the security, or restoration of their rights. The Quawpaws, as I understood at the time, had been bought out by the Government from their ancient possessions in

the Arkansas territory, west of the Mississippi, to give place to those Indians, who had been persuaded to remove from the east; and received a government title on the flats of the Red River, to which they had removed. Besides having lost their crops for the two successive seasons after their removal, by the floods of the river, and their people being reduced to starvation; their territory, given them by the Government, was disputed by the older and wilder tenants of that region, and themselves were threatened with war and extermination. They came to Washington, with this argument in their mouths, praying their great father to restore them their former possessions, and permit them to come back. But their former home was already appropriated; and a bargain is a bargain. I do not mean, that they received this cruel answer; but such was the practical result. They were told, as was understood, that they might come back, and stay where they could find a place, *until* it should be wanted by their white brethren!

This new and immense system of change, and the relations and exigencies of its parts, all in the condition of urgent advancement, will not conveniently admit of treading back—of undoing what has been done. Those tribes, who are deprived of their home by a *bargain*, whether

made in wisdom or not, must take their chance of getting another, in such an unforeseen occurrence. There are so many to accommodate, and so many complaints of grievance, that it is impossible to listen to all. These inconveniences and misfortunes are the natural and unavoidable results of the system. There is so much haste, and so much ignorance of the country, into which the emigrating, or rather *banished* tribes are pushed—ignorance of its susceptibilities, and ignorance of the conflicting claims, which are likely to be asserted by the old and rightful tenants—that measureless distress and endless strifes are reasonably to be expected.

The Cherokees were also at Washington, urging their suit before the Judiciary of the nation. Their own Government and all its institutions had already been overthrown and superseded; their religious teachers, Messrs. Worcester and Butler, had been thrown into the penitentiary; their annuities had been withholden from the disposal of the chiefs of the tribe, that they might be deprived of the means of prosecuting their appeal in the Supreme Court; the jurisdiction of Georgia had been thrown over their country and people; their very territory was claimed and seized, as the

property of the State; and they were now cast entirely upon their own resources, reposing their last hopes in the legislative and judicial branches of the Government.

This delegation from the Cherokee tribe—or nation, as they are commonly called from their numbers and respectability*—was composed of three of their principal men, or chiefs:—Messrs. Taylor, Ridge, and Coody. Mr. Taylor is a plain, practical, common-sense man, of good manners, of unbending integrity, a professor of the Christian religion, speaks English with purity, and but for the cast of his countenance, might be taken any where, as a branch of English lineage. Messrs. Ridge and Coody are both men of a liberal education, polished in their manners, and worthy of any society. The propriety and dignity of their demeanour are not simply unexceptionable, but commanding, prepossessing, and attractive. They enforce respect and esteem. Though young, both under thirty, yet the necessities of their life—having been for years, in conjunction with other chiefs of their tribe, engaged in this public controversy against Georgia, and in correspondence with the authorities of the General Government and other public men,

* About 20,000 in all—6000 having already removed into the Arkansas, west of the Mississippi.

members of both Houses of Congress — have compelled them to be acquainted with affairs of State; and they actually know more of the institutions, laws, and government of the United States, and are better qualified to sit as members of Congress, than a large fraction of those, who occupy a seat in the House of Representatives; and this may be said without dishonouring that body. And yet these men are parts of that race, of whom it has been gravely asked:—"What tribe has been civilized by all this expenditure of treasure, and labour, and care? Where is the tribe, who have changed their manners .... who have exhibited any just estimate of the improvements around them, or any desire to participate in them? They stand alone among the great family of man .... a distinct variety of the human race .... wild, and fierce, and irreclaimable, as the animals, their co-tenants of the forest." And of whom also the *late* Secretary at War of the United States, who retired from that office in the spring of 1831, had the generosity to say: "It is an utopian plan to think of civilizing the Indians. Nature must first change,"

CHAPTER XI.

THE RESULT OF THE MISSION OF THE INDIANS FROM GREEN BAY TO WASHINGTON.

It will have been seen, that I have taken no pains to conceal the true character of the wild Indian. Perhaps it will even be thought by some, that I have awarded to him more of savage merit, than he is entitled to. It must also have been noticed, that I have incidentally and expressly adduced sufficient testimony of facts, to demonstrate the Indian's susceptibilities of improvement. I confess, that I have no patience, nor can I make any terms of peace with those, who seem to be taking pains to find an apology far abandoning the Indian to perdition, temporal and eternal, for the incorrigibleness of his disposition. Much more unbecoming—much more inexcusable and cruel, does it seem, when high official stations, which hold the destiny of the

Indians in their hands, can stoop to traduce their nature, and thus abate and check the sympathies of mankind for this afflicted people—sympathies, which are few and small and inoperative enough, without these apologies. All sense of propriety and delicacy, even where a holier principle might be wanting, would seem to demand and impose at least the appearance of tenderness in such a quarter. When I speak of the Indian as he is, *uncultivated*, it is my object to represent him in the light of historical fact. And if I have sometimes appeared to be amused, for the sake of amusing my readers, in descriptions of his native costume, habits, and manners, let it not for a moment be thought I would treat these subjects with unfeeling levity; or that I desire any other, than first to awaken an interest, that I may challenge and call into action a sympathy, for his condition.

In the last chapter I indulged a little in a notice of the general appearance and manners of the wild Indians from Green Bay, who came, or rather were *brought* to Washington, in the winter of 1830-31. It may be proper, and to the point of our general aim, here to say a word in explanation of the reason of their mission.

The reader has before been made acquainted with the controversy at Green Bav.

ostensibly between the New York and native tribes, but *really* between the former and the General Government — or mediately, in the place of the Government, those who were interested in destroying the title of the New York Indians, acquired in that quarter, that the way might be open for the erection of a new State. It has also been fully developed, that the wild tribes of Green Bay, or of the North-West Territory, had been persuaded to a rupture of the peace with their brethren, who came from the State of New York, and who had purchased territory of them, and settled down by their side on terms of amity, and with every prospect of mutual advantage; the New York Indians being civilized, and promising to render all their influence and assistance to improve the condition of their new neighbours, and reduce them to habits of civilization; that all might march forward together in the way to the proper dignities and higher states of human society.

It is also suitable here to revive the recollection of facts, before recognized, that the title acquired by the New York Indians in that quarter, covered the *key* to the country, without the possession of which, the project of a new State could never be executed. In pursuance of the object, vital and important, of obtaining

advantages adequate to exclude the white man from that territory, by the recommendation of the Governor of Michigan, and under the supervision and sanction of the General Government, the New York Indians had purposely, in their negotiations with the wild tribes, acquired a title sufficiently extensive to answer this purpose—with the understanding, that the country, thus comprehended, should be held by them in common and in trust, to be defended from the white man, for the use and good of all—a small and specific tract excepted, which was to be the exclusive property of the New York Indians, and which their tribes had already occupied by actual settlement. The propriety and reason of this arrangement were manifest:—the white man's encroachments were anticipated, and the New York Indians, by their superior knowledge and experience, were alone capable of defending the territory.

The white man came. He fixed his eyes on this desirable country, and coveted it. But could he lift the title of the New York Indians? On examination, he discovered "a flaw in the indictment." It could be shown, that the title covered an unreasonable extent of territory. Consequently there must have been fraud in the negotiations. The title must be impeached.

The wild tribes must be alarmed; they must be told, that these New York Indians have caught them in a snare, and will ultimately eject them entirely from their own country; and that this is their intent. They must be urged to sue for the recovery of their territory, which the Government will undoubtedly grant, through our instance. And when this is accomplished, we can purchase of these wild Indians on our own terms, and without difficulty. That is: we can manage, that the Government shall do it for us, with the view of forming this North-West Territory into a new State.

The plan succeeded. The too credulous Indians—always credulous—yielded at once to the suggestions, believed what they were told, especially when such cogent reasons were offered for their jealousy; they were alienated from their New York brethren, and commenced a suit before their great Father, for recovery of the land, covered by the title, which they had hastily given up in their ignorance; and which they avowed had been fraudulently obtained against their will. Thus one set of Indians was set in array against the other, for the destruction of the rights of both. It is sufficient to observe, that after a controversy of four to six years, stimulated continually by the agency of the whites, who were all the

while flocking into the country with the hope of gain and future wealth; commission after commission having been sent from Government, to rectify the disorders, and whose acts only heaped confusion on confusion, as a reference to the developements of the first volume will shew; the New York Indians disheartened, and reduced to the apprehension, that they would lose all their possessions; and by this time it having been settled, that the North-West Territory was too valuable to be held by the Indians, and must become a separate member of the Union;—all parties came at last to submit the case to the President at Washington.

The wild Indians, therefore, on this occasion, are to be regarded, as mere tools. They were *brought* to Washington, to protest against the claims of the New York Indians, and to force them to the acceptance of a small tract of land, which would not interfere with the design of erecting a new State in that quarter; and where they would soon be surrounded and hemmed in by a white population, as they were ten years ago, in the State of New York, before they removed.

Wild Indians are children; and when once they are brought into a dependant condition, and feel their weakness, it is perfectly easy for those,

who have the advantages of influence and the means of tempting them, to persuade them to any thing, which may be done before the world with impunity. It is only necessary to understand and humour their prejudices; to court their imagination with toys; satisfy their present wants, which may always be done at a trifling expense; "talk good talk," that is, profess friendship and make fine promises; and their compliances will be easy and sure. Let their chiefs be brought to Washington to see their great Father, &c. &c., and then sent back at the expense of Government, with all convenient pains to please them, as just specified, and they may be persuaded to any thing, which is not positively discreditable to propose.

The Menomenies and Winnebagoes were exactly in this mood, and under such entire control of others, when they came to Washington, to push their controversy with the New York Indians before the President.

It was now altogether too late to go back on the original basis of negotiation, under the administration of Mr. Monroe, which led the New York Indians to Green Bay, viz:—that a home should there be provided for the Indians, from which the white man was to be excluded. Not, that there was no reason, or justice in it. Both

these considerations demanded it. But *now* there was no authority in the case, before which such an argument would be listened to for a moment; and nobody thought of employing it. Things had got too far forward for such a claim of justice to be urged. "Expediency" was the order of the day, and not "principle." The men in power ten years before, who must have had a conscience in relation to these transactions, had been succeeded by other men, into whose bosoms the same conscience could not be infused; who could not see with the same eyes; and who had a very different object in view, claiming a different appropriation of the premises in question. To *name* the project, which constituted the understanding of all the parties, when the New York Indians agreed to go to Green Bay — and which was their sole and governing motive—was of no use. The only question was:—"How shall we set these Indians at peace, and go on with *our* project, maintaining decent appearances?"

I do not think, indeed, that the highest department of the Government really understood the circumstances of the case. It was its privilege, its shield to be ignorant; and yet by no means a sufficient apology. The whole business had all along been in charge of mediate and shifting

agencies, so changeable and so rapidly succeeding each other, that it was next to impossible to find where the chief responsibility attached. Every agent had his own views and his own conscience; until all conscience, such as the elements of the original understanding imposed, evaporated from the scene; until at last, the project of rescuing that country entirely from the Indians, obtained a complete and uncontrolled supremacy of influence.

The winter rolled away. And as the President had in fact little to do with this matter, he was accessible to the Indians only enough to save appearances of a censurable neglect; and when he admitted them to his presence, he could only say such things, as he had been slightly instructed in from the war-office. Nothing of any account was effected. Notwithstanding these long and expensive journies; these vexations imposed on the Indians; this tantalizing of their hopes, so far as any hope remained; this exhausting of a winter at Washington; they were compelled to return in the spring, with all things nearly in the same state, as when they left their homes in autumn; with this difference:—that they saw themselves entirely at the mercy of those, who had brought the storm over their heads. I of course speak

of the condition and prospects of the New York Indians; who alone understood their rights, and felt the anguish of their disappointments. The wild Indians were entirely passive—knew little, felt little, and are doomed of course, by their easy compliances, soon to be removed beyond the Mississippi. The New York Indians will probably remain, in the possession of a very limited reservation, regretting only, that they have purchased to themselves all these troubles and disadvantages, by having complied with the proposals of Government ten years ago, and resigned their home in the State of New York, for this distant emigration, without having attained any one of their objects.

And what is worse than all, they are not simply to be confined to narrow limits; but it happens, that the Stockbridge tribe, in selecting the place of their settlement on Fox River, out of the lands they had purchased, pitched upon and embraced the *Grande Kawkawlin*, or the great falls, affording an infinite water-power for machinery, &c. Now, it was "expedient" for reasons of State, and for the profit thereof, that these falls and this water-power, should come into the possession and be under control of the whites. Hence the Commission, sent up in 1830, fully appreciating the importance of this arrangement,

recommended to Government, in the adjustment of this controversy, that the Stockbridge tribe should receive their allotment of land on the west, or opposite side of Fox River, in a district of low grounds, which can hardly, if ever be redeemed for cultivation. We have seen the comfort of the Stockbridge settlement, such as they had made it, on ground well chosen, of a fruitful soil, and easy tillage, already reduced to well cultivated farms, planted with their dwelling-houses and stores of grain, with a flour and saw-mill, and incipient arrangements for the establishment of machinery at the rapids. But now they are told: "You must give up these grounds and improvements, and go to the other side of the river!" And from the latest intelligence in 1832, it seems likely, that this removal is to be enforced upon them—not, however, without some sort of indemnification.

It is understood, that the basis of the Commission, sent to Green Bay in 1830, was not the original understanding of the parties, negotiating in and for these premises, under the administration of Mr. Monroe. That understanding was entirely out of sight, and the conscience, witnessing to it, and which ought to defend it, was buried. A new state of things had arisen; and the Commissioners had nothing to do with the

old. It was their business to recommend what would not interfere with the new plan, and what would best conduce to its interests. But the actual location of the Stockbridges was an embarrassment to this project. They must therefore be removed.

I am not insensible, that the execution of this State-project, in regard to the North-West Territory, will seem, in its nakedness, to be very atrocious; and that many persons, official and others, have viewed the case differently from myself. It may be true, as I have allowed, that the appropriation of that region to the exclusive possession of the Indians, was never fully matured and in all respects sealed, as a plan of Government; that Congress never acted upon it, as is proposed to be done, in respect to regions beyond the Mississippi. It may be and doubtless is true, that when the value and importance of the North-West Territory, and its eminent fitness, as a prospective member of the Union, came to be ascertained, its destination, as such, became fixed in the minds of public and interested men; and that these men have been accustomed to maintain, that no public faith, pledged to the Indians, was in the way of the execution of this plan. Nevertheless, the actual removal of the New York tribes to that quarter, the reasons

assigned, the public documents, and the whole history of the transactions, are substantially, as I have endeavoured to represent them. The scheme of removing all the Indians beyond the Mississippi is more recent, and is thought by its advocates to be better; it is perhaps considered so much better, as to make an apology for breaking up this earlier and less matured plan. But whatever reasons of State may be pleaded for these transactions, I know not how it is possible to deny, that the public faith was fully pledged, in palpable forms, for the exclusive appropriation of Green Bay and an indefinite portion of the North-West Territory, as the property and permanent residence of Indian tribes. It might have been a hasty pledge—but still it was a pledge.

CHAPTER XII.

THE FIRST CASE OF THE CHEROKEES IN THE SUPREME COURT; ITS FAILURE; AND FAILURE OF A MOTION IN CONGRESS IN THEIR BEHALF, 1831.

As I have stated, the Cherokees had a case depending in the Supreme Court, and were urging an application for relief in Congress, during the winter of my sojourn at Washington.

I do not remember the exact form of the question in Court. But the case was brought, as I believe, under the following clause of the 2d section of the 3d article of the Constitution: "That the judicial power (of the United States) shall extend to all cases, in law or equity, arising under this constitution, the laws of the United States, and *treaties made*, or which *shall* be made, under their authority; ..... *between a State* and the citizens

thereof, and *foreign States*, citizens, or subjects." The Cherokees appeared in Court, as a *nation*, to plead the obligation and protection of *treaties* between themselves and the United States. The constitution, as above, says: "The judicial power shall extend to all cases, in law or equity, arising, &c. *between a State and foreign States*." The case failed, not for want of equity, or of a warrantable construction of the constitution, but for want of a *literal* expression of constitutional law, sufficient to cover and embrace it. The Court, benevolent and desirous of relieving the Indians, and fully believing, that they ought to be relieved from the usurpations of Georgia, did not like to adjudicate the case and hazard a decision, based on the ground, that the Cherokes were a *foreign* nation. A hearing, however, was granted to the counsel of the Cherokees, Messrs. Wirt and Sargeant, which occupied several days. And it is not improbable, that the Court would have sustained the argument, from the equity of the case, as well as from the obvious design of the constitution, except that they saw the door was open for the Cherokees to appear in another form, and enforce a decision upon the general merits of the Indian question, and one that should cover the whole ground of controversy; subjecting the

injured, however, to the delay of a year, during which time great strides were expected to be made, and were actually made, by the powers opposed to them. But since the Cherokees were not in fact, a *foreign*, but a domestic nation, sustaining peculiar relations to the Government; and since it was evident, from the nature and extent of their grievances, that they might be heard on other grounds, and obtain a decision from that tribunal, placed beyond the reach of controversy, both in law and equity, it was deemed prudent to dismiss the present case with advice. The argument of counsel was published, making a heavy octavo, along with the decision of the Court—throwing and concentrating a flood of light upon the subject; and preparing the way for a future triumph. The expectations of the Cherokees, so far as the law of the case was concerned, were rather revived, than depressed, by this decision. In the Court, their confidence was fully established. They anticipated with certainty what would be their decision in 1832. That decision may be found in the Appendix of this volume, and has previously been the subject of our notice.

But what would the decrees of courts avail them, so long as there was no power to enforce them? The *law* of the case was bright; the *fact*

of the case was dark and gloomy. Georgia had already broken them down, and the President had declared, that he could not interpose his power. Georgia and the President together had anticipated the Court, had accumulated and brought to bear upon the Cherokees the most energetic influences, and were fast driving them before their irresistible hand. While the law of the nation delayed on one side, the penitentiary of Georgia was open on the other. The former, when its decisions should at last come out, might prove to the world, that there was virtue in the Court—that there was yet independence and a sense of right in that high and sacred branch of the Government; at the same time, that ruin would be rolling its tide over the heads of the Indians, and sweeping them away. However grateful, therefore, the Indians might be for the Court's scrupulous regard of right, and for the pledges, involved in their decision of March, 1831, that a hearing might be had and a favourable decision, on other grounds—there was little consolation. From Georgia they had turned to the President. But the President could not listen to them. From both these, they appealed to the Court; neither could the Court hear them in season to answer their purpose. They had appealed to Congress; but in vain.

We have before recognized the fact, that the question of removing the Indians was virtually tried in Congress, in the spring of 1830, by the passage of a bill of appropriation for this object. The President called for money to sustain and execute his policy in this particular. Of course it brought the entire merits of removal under discussion. A long protracted debate, and one of the most animated that ever characterised the deliberations of that body, ensued. Public sympathy was very much roused. Petitions poured in from all parts of the country, to protest against the measure, and to pray Congress to rescue the Indians from such violent treatment. The measure, however, had been matured; the question had unfortunately become a party one; the strength of parties was measured; and the virtue of the petitioners, weighed in the balances of party strife on other and great questions, went for nothing with their opponents, who kept silence, and permitted their leaders to go on. The contest, however, on the floor of both houses of Congress, with the advocates of Indian rights, was a contest of principle; and was maintained with an ability and determination, which will for ever reflect an equal lustre from their hearts, as from their understandings.

With the advocates of the bill, it was pre-

tended, that it did not involve the whole range of the great question of removal, although it might incidentally be discussed; that it only sought to provide for the emigration of those Indians, who had actually sold their possessions on the east of the Mississippi, and had agreed and wished to remove westward; that no force was contemplated, either in the purchase of Indian territories, or in the translation of their tribes from their old grounds to new; that this appropriation was necessary to redeem the pledges of Government, and that the refusal of it would enforce a violation of the public faith, &c. &c.

On the contrary, it was averred:—that the policy and scheme of the Administration were expressly avowed; that the conduct of the agencies employed to purchase Indian lands, and persuade the Indians to remove, imposed upon them a virtual necessity, and was as unjust, as it was dishonourable to the nation; that the faith and credit of the nation were being compromised with the usurpations of Georgia; that the plan of removal, and the manner of executing it, were hasty and reckless; that it was forcing the Indians to leave a certainty for an uncertainty, inasmuch as no adequate surveys had been made of the country, to which they were destined; that so far as the country was known, reports of its

fitness for the object were unfavourable, and the project was therefore cruel; that it was still more cruel, as well as unjust, to force the eastern tribes upon the western, without the consent of the latter, and leave them to quarrel and exterminate each other, which could hardly be avoided; that, in this haste, the measure, if suitable under any circumstances, was beginning at the wrong end, and anticipating future enactments and provisions of Congress, dubious as to the probability of their being made, and indispensable to the Indians in such a new and exposed condition, and which ought to be the first steps in the train; that there was no security, but the empty pledges of the Executive, that the Indians, thus removed, would ever be protected and adequately provided for; that the whole scheme was wild and utopian; that such an attempt to group and amalgamate the Indian tribes, was not only a hazardous, but obviously, by the light of experience, an impracticable experiment; that it was disturbing and breaking up all their incipient organizations of society, and turning them wild again; and that, whatever might be said to the contrary, it was mere affectation to pretend, that the entire scope of removal, in all its vastness, in all its responsibilities, and in all its possible results to the Indians and to

the nation, was not comprehended in this bill. It was well known, that the progress already made by the Executive in this business, in the use of the great powers with which it has been invested by sundry enactments of this body, has taken the full sweep of a general removal under its active energies; and that Congress is therefore bound most solemnly, by all the high and tender obligations the nation is under to this dependent people, to consider and settle *the whole range* of this scheme, *on its merits*, before they shall have engaged their responsibility in these measures. To vote the appropriation specified in the bill, for the object named, and under existing circumstances, would be affixing the approbation and seal of this body to the policy, of which it is a part, and which it is designed to sustain and execute.

But the bill passed, appropriating *half a million of dollars*, in addition to the customary provisions for Indian affairs; I do not know by what majority, but I think and choose to say, that it was very small. It was certainly a hard struggle — a mighty conflict. It was justice, pleading the cause of the oppressed and defenceless; it was honour, asserting the obligations of public covenants; it was a sense of responsibility to the Indians, to the nation, and to the world;

it was a care for the bulwark of the Constitution, the breach of which was destined to be involved in the measure; it was humanity and patriotism combined, contending against a cupidity of territory and a lust for extending dominion;—but all in vain.

It was the same Congress (the twenty-first,*) sitting in 1830-31, as in 1829-30; and of course, having so thoroughly agitated the Indian question at the first session, and having virtually resolved upon the course to be pursued, by voting the appropriation for removal, it was not to be expected, that they would do any thing inconsistent with that decision, at the second session. And as the debates of the first year, on this question, had been exceedingly animated, not to say, violent; and also on account of the press of business, and the shortness of the second session, which must always terminate on the 4th of March; it was difficult, without a very urgent demand, to bring up the Indian question in any form.

* The House of Representatives, in the American Congress, is elected every two years; the members of the Upper House, or Senate, are elected for six years, one third of whom is renewed once in two years, by a rotation of three classes. The new House of Representatives is considered, as making a *new* Congress, and is *numbered* from the adoption of the Federal Constitution in 1789.

There was, however, an urgent demand. The War Department had taken upon itself so to control the annuities, paid by the Government to the Cherokees, as to bar the possibility of their being appropriated, as usual, at the discretion of the tribe; or, so as to aid them, in their present necessities, in defraying the extraordinary expenses, to which they were subjected, in prosecuting their suit in Congress and before the Supreme Court. This was justly deemed a species of persecution — a cruelty: — that the Executive Government should not only refuse to afford them the protection, guaranteed by treaties; but that, having understood from unofficial sources, at least in an unofficial *manner*, that the Cherokees were practising the noble self-denial, and what was their sovereign prerogative, of appropriating as much of these annuities, as might be necessary to sustain their attempts for the recovery of their rights, it should stoop to interfere with the internal affairs and domestic economy of the tribe, and effectually control and divert their annuities from this high and sacred use; and thus compel the chiefs to travel through the United States, begging charity, to supply its place! The Cherokee chiefs, therefore, in their distress and inconvenience, applied to Congress in the winter of

1830-31, praying, that their annuities might be paid them in the usual way, and submitted to their own discretion. It would seem, they were not successful in getting the matter up through the standing committee on Indian affairs.

But Mr. Everett, of Massachusetts, the tried friend and eloquent advocate of the Indians, succeeded, under a storm of opposition, in bringing forward a motion to the point, from his place, and of his own individual right, as a member of the House. But notwithstanding, his motion was lost by a very slender majority, and the discussion principally limited to the speech, by which he supported it—a speech, characterised by his known ability and eloquence, especially upon that theme, itself always eloquent, on the public deliberations of which Mr. Everett had before so much distinguished himself. Mr. Everett claimed and secured the attention of the House for two successive days, during which he fully exposed this aggravation of the injuries done to the Cherokees, as well as the unworthy condescension and undignified manner, by which it was accomplished. It was not expected, indeed, that this motion would be sustained; although it may seem strange to distant and disinterested observers, how such a flagrant violation, not only of the domestic rights of the Indians, but

of the duties of humanity, could be passed over in silence, when fairly and directly imposed on the attention of the only body, which held the powers of legislation in the case, and when regularly challenged to exercise them. But it was near the close of the short* session of Congress, when the usual crowd of urgent business is always more than sufficient for the time, that remains. Besides, as the Indian question had been thoroughly agitated the previous session, to the no small agitation of Congress itself, and virtually settled, it was not generally agreeable to open another campaign, merely for conflict, and without result. The Executive might be wrong in this particular; but his party in Congress, being strongest, were not likely to pass a vote of censure on his proceedings, nor to interpose any obstacles in the way of his measures, since they were already committed to sustain his general policy. They were determined, therefore, not to admit the question; and they threw it out, after a short debate on the motion of Mr. Everett.

'I happened to be a spectator of this debate, as of many others in both Houses of Congress; in

* The second Session of every Congress is limited to the 4th of March; whereas the first ordinarily runs into the summer, and if business should demand, might even be continued without recess to the ultimate limit.

the progress of this session. On the second day, towards the close of Mr. Everett's speech, as was suitable and natural, after having offered the materials of his argument, and summed up his reasonings, our attention was challenged—and we may say, with delight, with ineffable satisfaction, to the sentimental appeals, of which his theme was so abundantly fruitful, and which he poured upon the House in a torrent of befitting eloquence.

I occupied a place in front of the gallery of the House—there being three ranges of seats appropriated to strangers, one lifted up above the other, behind the majestic columns, which encircle that magnificent chamber. My attention was chained by the eloquence, and my eye was riveted on the person, of the orator. I regarded not who might be around, or immediately behind and above me. I saw, and heard, and felt nothing, but the sentiments, which animated the soul and the countenance of the speaker, and flowed from his tongue, and spoke so earnestly in his manner. As he drew to a close, and threw the unhappy Indians on the honour of the House and the sympathies of the nation, depicting their dependent and helpless condition, and their accumulated injuries, I began to be tender. The weakness, that my mother gave me, moved strong

in the tide of my feelings. But yet, wishing, like all others in such circumstances, not to be exposed, I mustered effort to guard and defend the sluices; and while labouring to suppress my emotions, my ear detected, in the midst of the profound stillness of the assembly, the falling of something, like a drop of rain, on the cape of my cloak, and near to my head. I turned and looked up—and two of the Cherokee chiefs, named in the previous chapter, stood above me; one of whom, with his head dropped into his hands, was endeavouring to conceal that gush of emotion, which myself at the same moment was trying to master. A tear had found its way from its deep and agitated fountain, and, unknown to himself, dropped on my shoulder, and thus challenged my attention. Never did I stand in such a place before—I never expect it again. And I shall be excused and not disbelieved when I say, that the little world around me, those magnificent columns, that vaulted and lofty dome, the grave assemblage of legislators below, the speaker, and all and every thing, within the range of vision, began to swim before me in one sea of commotion. My own head dropped—while I still listened to the last words of the Indian's advocate. There is an honesty—there is great power in tears, on any occasion. But

where did circumstances ever combine, constituting such an appeal? There was the assembly, who one year before had enacted the ill-fated doom of the Indian; and the Indian, delegated from the midst of the common wreck of the misfortunes of his race, had come to make his last appeal to their honour, their faith, their humanity. And while his friend and advocate was pleading his cause, himself, standing and listening with hope, (if hope could yet remain) in a remote and retired corner, was suddenly and unexpectedly overtaken by the irresistible rush of his feelings; and he sought to hide his grief—and in that very effort his grief was betrayed. Himself and companion stood apart, and asked and expected no sympathy. They knew well, that all this eloquence was doomed to be wasted in vain;—and that was it, which inflicted the anguish of their spirits.

I had known them—I had talked with them—I had loved them. I may say, I had felt for them. But he who would not have felt for them at such a time, and at such a sight, as that which it befell me to witness, must have been more than proof against the common susceptibilities of our nature.

Who could stand before THAT *tear?* It suggested at once all the injuries and all the woes of

that desolate and suffering people. All the sins done to them seemed embodied and concentrated in it—crying for atonement. It was an innocent drop in itself—but charged with such associations and forced by such a cause, it seemed also charged with the elements of heaven's high displeasure. If the ear of God would hear the voice of Abel's blood, would not his eye also regard the Indian's tear, and make inquisition! Such were some of my reflections; and I could not help it.

But the tear, unfelt, unseen, unknown, except by me and heaven, availed nothing. The motion of Mr. Everett was lost.

CHAPTER XIII.

AN ACCOUNT OF A DAY OF FASTING, HUMILIATION, AND PRAYER, OBSERVED BY THE INDIANS, AT THE CITY OF WASHINGTON, IN THE SPRING OF 1831, ON ACCOUNT OF THEIR TROUBLES, AND BEFORE THEY SEPARATED.

As the close of the last chapter has perhaps brought over us somewhat of a sentimental, and partly a religious mood, I am tempted to hazard some religious reflections; especially, as the last things relating to the Indians, which occurred at Washington in the spring of 1831, and which I propose to notice, were entirely of a religious character. And if sentiments of religion are not most welcome to men of worldly minds, we think there are few so unfeeling, as not to take an interest in those misfortunes, either of individuals, or of a people, which compel them at last to make religion their refuge.

The first volume of this work has demonstrated sufficiently, how the author happened accidentally to become acquainted with these concerns of the Indians. Like many others, I had heard of them before at a distance, and felt some interest. But that which is every body's, is nobody's business. I had never known the length and the breadth of these injuries. I had never conceived of their aggravation. I had never appreciated the irresistible weight of oppression, which those injuries had inflicted on the spirits of that fallen and falling race; nor the extent of desolation, which they were bringing over their prospects. Like many others, I had thought, that they were perishing, because they *would* perish; not from the fault of others, but their own. But I trust I have already given sufficient reasons for changing my opinion; and I would hope sufficient to have gained some society—sufficient to have left a like impression on the minds of others, who, like me, may have felt too much indifference, and kept themselves aloof from the sympathies, which the transactions I am about to narrate are naturally calculated to awaken.

The intimacy I had acquired with some of the Indians in the North-West Territory, in the autumn of 1830, naturally led me to a farther

cultivation of their acquaintance in the following winter at Washington. And from my own independent condition in society there, as well as from the natural current of my feelings, I could not divest myself of a deep interest in their concerns, then pending, in dubious prospect, before the Government of the United States. I extended my acquaintance and mingled my sympathies with the representatives of the different tribes from the west and south. I inquired into the history, and watched the progress of their affairs, and learned to anticipate the results developing, and yet to be developed.

On the evening of the same day, when the motion of Mr. Everett was lost in the House of Representatives, I happened to be in company with two of the most prominent and influential Indian chiefs, then at Washington, who, on retiring, mentioned:—"that the Indians, then at the seat of Government, from various parts,* in view of their discouraging prospects, at that moment more disheartening than ever, had agreed and arranged to observe a day of religious solemnity, before they separated, and on account of their disappointments and misfortunes—*a day of fasting, humiliation, and prayer.*" This

* None of them had as yet gone home.

purpose was merely announced to me, and they withdrew. Though perhaps as much alive to the condition and prospects of the Indians, as was common among those, who had espoused their cause, I was not prepared for this! It startled me, and awakened a set of emotions I had never felt before. I had heard it prophesied from the religious world—"that heaven would visit the nation for these injuries." Many sad and gloomy bodings had poured forth from that quarter, on this account, until the profane and daring had given to them the name of—"the croakings of hypocrites!" But as if I had heard nothing, seen nothing, felt nothing of this kind before, the announcement of this contemplated religious solemnity, in such circumstances, for such purposes, and to be observed by such a group—the very representatives of this injured people—moved upon my feelings, as if I had been come over by an unexpected and mighty wave of the sea! "Are they indeed about to give themselves to prayer?" I was ready to exclaim;—"to weep before the throne of God, having failed in all their entreaties with 'the powers that be' on earth;—to prefer their complaints into the ear of Him, who will pity the oppressed, and punish the oppressor? Having suffered the breach of all covenants between themselves and the people

who had succeeded to their possessions, are they about to seal an alliance with Him, 'who *keepeth* covenant,' that he may be their Advocate and Defender?" I would not,—as I thought at the moment,—with such argument in their mouths, as I knew they might carry to the throne of heaven,—that they should pray against *me*;—I would not, that they should pray against *my* people. I would not see them on their knees, and lifting up their voices, mingled with their tears, and saying unto God—"Be thou the avenger of our wrongs"—if *my* people had done them the injury! Were there no invisible stores of wrath in the magazines of the Almighty's retribution, kept for offending nations? Where, and how far distant, and on what contingency, might be suspended the scourge of civil discord, threatened to be wakened up by these very acts of outrage, and by other concurrent causes? And when once it should break loose, who could fix its limits? Where was the earthquake, and pestilence, and famine, and the numberless scourges of God's avenging hand, which ever lie in abeyance to his summons? What community would dare to challenge them, when guilty of such a sin? Could not these judgments, and would they not, some of them—and in their wasting, desolating power—be called down from

heaven by the prayers and strong cryings of these poor Indians? They had appointed a day, in which they were to spread their cause before the throne of heaven; they had no more expectancy from earth; their hearts were sickened by disappointment; they were gathering up their wasted affections, arming their wounded spirits with a new species of courage, and beginning to lift up their eye to the place of the Almighty's dwelling.

For their loss, the loss of the inheritance received from their fathers, these Indians had received *one boon:—the true religion;* and they had been taught how to use it, in the day of their adversity. In the present instance, they must use it against those, from whom they had received it. Not that they would desire the hurt of any; far from it. But, peradventure, God could not give them relief, except by turning his hand upon their oppressors, to humble their pride, and make them willing to be just. Can the sufferer, in the hour of his importunity, while prostrate before the throne of Jehovah, dictate the methods of his deliverance? He feels his misery, and prays for relief, as God shall please. That is all. And the Almighty chooses his own methods.

As I believed in Divine retribution on all

communities, for their public crimes, there were many reasons, why I should feel, that my country might well fear the prayers of these Indians in such circumstances. They had betaken themselves to a weapon, the strokes of which are invisible; they had engaged in a warfare, the guidance and control of which were vested in the all-directing hand. Their adversaries could not meet them on that ground, except as they also should come — weeping and repenting.

On Saturday, the 5th of March, 1831, the following record, or something like it, was made at Washington, in the proper place:—"Supreme Court of the United States. The Cherokee nation *versus* the State of Georgia. Bill in Chancery." And a motion for *injunction* against the proceedings of Georgia, was entertained by the Court, and the time of hearing appointed for that day week. The next day, Sabbath, the same cause, and the cause of the Indians generally, was carried by the same plantiffs and by others in conjunction, into a higher Court, and a bill was filed in the chancery of heaven: "The Indians *versus* the Government and people of the United States." The special religious solemnity, above alluded to, was observed on this day by Indians of several tribes, represented at the city

of Washington, from the south, west, and north. In the morning they met by themselves, their religious services being conducted by the Rev. Mr. Williams, of the Oneidas, in the English language, as most of the Indians present understood English, and their own tongues being quite diverse. Others, however, took a part, and prayers were offered by some of the chiefs in their native languages. In the evening, by special invitation, the services were conducted by a Presbyterian clergyman;—present, besides the Indians, a few white friends, male and female, from different parts of the country. A prayer was offered by one of the Cherokees in his own language, also by a gentleman from Boston. The services were held in both instances at private rooms: in the morning at Brown's, and in the evening at Gadsby's—nobody, except some few friends of the Indians, knowing any thing of it. It originated among themselves, and was shaped and conducted by themselves. And it may be questioned, whether any set of men, in a day of adversity and public gloom, with nought but darkness overshadowing, and calamities heaped upon them, with great and momentous interests at stake, ever felt more religiously, more keenly, or more weightily, their dependence on that High and Almighty

Providence, which controls the destinies of nations.

One of these chiefs, from the North-West, had an interview, in my presence, about this time, with one of the friends of Indians in the Senate, or Upper House of Congress, whom he understood to be a religious, conscientious man. It was for this reason, that he wanted to see him. Not being able to speak good English, he addressed the honourable gentleman through an interpreter. The substance of his talk, which occupied perhaps fifteen minutes, was this:—"We, Indians, have trusted too much in man. We feel, that we must trust in God." His manner was humble, sincere, and affecting. He expressed his confidence in the senator, because he was a Christian; and declared, that this was the reason, for which he wished to speak with him. He expressed his gratitude for the honourable gentleman's condescension and kindness, and gave him his hand, the Indian's pledge of friendship, and his valediction. This was all unexpected, and quite moving. It demonstrated a deep religious feeling. The senator replied in a few very appropriate remarks. The same Indian said to me afterwards:—"I glad I *see* (saw) him"—the senator. "It was good," laying his hand upon his heart.

It was this sort of feeling, evidently, which moved these Indians, of themselves, even without a suggestion from any other quarter, to appoint and observe this special solemnity. They showed themselves deeply serious, religious, and devout. They seemed, in that hour of their extremity, and which they felt to be such, to look above man, to God. They religiously committed their cause, the cause of their race, under their most pressing and painful embarrassments, to God's hands; and they did it in such manner and circumstances, at the city of Washington, where they had for many long years been suing for justice in vain; where measures had been concerted* to deprive them of their last hope, and to nullify the solemn covenants between themselves and the United States, in which were vested and guaranteed all their rights. *There*—upon *that* ground, having tried in vain to move the heart of man to award them justice, they sent up their united cry to heaven; *there* they lodged their solemn appeal in the council of the upper world; *there* they committed their cause to the heart of the Supreme Ruler, and resigned its disposal to his governance.

* I allude especially to the *Bill of Appropriation for their Removal*, which was a virtual sanction of the entire plan.

And these were the last acts of the Indians, at the city of Washington, in the spring of 1831, before they returned to the tribes, which they represented, in various and remote parts of the States and territories of the Union.

CHAPTER XIV.

THE GREAT MORAL CAUSES, IN THE HISTORY OF AMERICA, WHICH HAVE OCCASIONED THESE ENCROACHMENTS ON THE RIGHTS OF THE INDIANS.

HISTORY is an obvious and palpable thing, when once the facts, which compose it, are made obvious and palpable. But the moral analysis of history is not so easy a task. In this, different minds may differ widely; and here all minds are liable to mistakes. And yet this is an interesting field of speculation, and replete with practical and important observations. When the human mind has traced a series of events, from their origin, which has led to a great and momentous result, it is never satisfied with a simple view of the facts. Its next and final effort is to pry into the philosophy of those facts. Philosophy is the religion of the material world, and

what is commonly called religion is no other than the philosophy of the moral. And the mysteries, or secrets of religion, natural and revealed, comprehending these two fields of observation, are the ultimatum of man's attainment; they are the home and sanctuary of the Eternal One. They are alike the duty and the privilege of man to investigate. And as all error, resulting from unfortunate speculations on the things of this life, is fatal for the practical purposes of life; the same is the consequence of all erroneous speculations on things pertaining to the life to come. For the latter we have one, and only one sure guide:— a divinely-inspired record. It was fit and necessary that we should have it, as all things beyond the grave are utterly impalpable to our present faculties of observation, and must be received, if received at all, in faith. But history is the book of revelation of the things of this life; and it is the province of man to investigate it.

I propose now an attempt to investigate and develope the great moral causes, which have induced the great and momentous result, that makes the leading and prominent topic of these pages.

The original cause, we know very well, is the depravity of man. But this solution, which

makes a sort of truism—that man is wicked because he is wicked—does not answer the purpose of our inquiry. We wish to develope the first and the consecutive palpable occasions, which gave this particular direction to human depravity, and the forms, under which it has all along been embodied.

We may say, then, what has before been recognized, that the first palpable occasion for this offence against the rights of man—was the temptation presented to the governments of Europe, by the discovery of America. The original forms of this aggression are to be found in the royal charters, patents, and powers, by which America was first parcelled out among the existing Governments on the east of the Atlantic, which so greedily laid their hand upon the new world, and threw their jurisdiction over its territories, generally without regard to the rights of the Aborigines. And although we have sufficiently proved, that the original and obvious intent of these charters was to assert *only rights relative* to the respective European claimants, for commercial and state purposes, relating to and between themselves; and that the said charters neither affirmed, nor denied, nor had any respect to, the rights of the original tenants; yet such was the *letter* of them, as to justify any pretensions,

which the convenience and interest of the emigrating colonies, or individuals, might at any time, and on any exigency, suggest. That these powers were often used and applied to the utmost bound of their *literal* authority, is too well known to be made a question. Such indeed have been the facts of this kind, so frequent and prevalent, that the most eminent jurists have thought themselves obliged to explain and defend these claims. So exceedingly tolerant has the world been upon this subject, even to this time, that the impudence of these claims has scarcely been rebuked. It must be confessed, that even the modesty of some influential American republicans, so very conscientious, as they have proved themselves in their public "Declaration" before the world of the rights of man, and in their zeal to defend them, seems not to have discerned the sin against consistency and propriety, in asserting the same claims over the American Aborigines, as are to be found in the letter of the first charters. They are not ashamed to quote this authority, in vindication of their own practice; and they place their chief reliance upon it, as we have before seen.*

* These observations are of course to be applied, not to the American people, as a body—for they are far from deserving them—but to those, who have recently taken the lead in the new measures relating to the Indians, and who have happened to have a transient control over them.

All this shews the irrevocable and irresistible law of precedent; and that no set of men are ever to be trusted to their own sense of right, nor even to the force of a law of consistency, which they have themselves made and published, so long as it interferes with their views of interest. It is true, that the highest judicial tribunal in the United States has decided, that such was not the meaning of those charters; it is true, that the definition of the rights of man, asserted in the "Declaration of American Independence," stares these men in the face, and admonishes them of inconsistency; it is true, that the Government of the United States has in various forms, and by the most solemn public engagements, multiplied and renewed from time to time, fully acknowledged all the rights of the Indians, until quite recently;—yet all this avails nothing, when interest interferes, and the authority of such precedent can be quoted. It is true, that the American people did not hesitate to rebel against such authority, when it operated against themselves, even in forms comparatively mild and tolerable; and the world generally think they did right.

Another great moral cause, leading to this final *denouement*, is to be found in a combination of the two influences of an habitual neglect to

improve the condition of the Indians, and an uninterrupted series of practical aggression on their rights, piece by piece, which has been submitted to on the one hand from weakness and necessity, and tacitly tolerated on the other; or, in the *customary liberties*, which have been taken all along, since the first settlement of America, in a gradual encroachment, direct and indirect, on the rights of the Indians. That which is yielded on one side, and acquired on the other, by little and little, whether it regards a social right or material property,—whatever the act, right or wrong, although it leads to the same great result, as a single leap, or grasp,—it is yet less impressive on the public mind. If the acquisition, or advantage gained, be a violation of right, the moral sense of the responsible party has been gradually accommodating itself; the shock done to society is less in fact, and comparatively little felt. I say the *shock* is less, although the actual amount of deterioration in the moral sense must be the same.

It is matter of historical truth, that the American Aborigines have, from the beginning of contact between themselves and the descendants of Europeans, been criminally neglected. It cannot be denied, it is obvious at first sight, that a moral obligation accrued and attached itself to

European descendants, who have occupied and peopled America:—first, that their advantage should impose and inflict no disadvantage on the Indians; and next, that, as a compensation for their acquisitions on that continent, and for the voluntary retiring of the natives to give them a place, they should conscientiously institute and sustain a system of efficient measures for such an improvement of the Indians, as would secure the preservation of their existence, and permit no necessary obstacle to their prosperity, as a race. All experience proves, that barbarians cannot subsist, as such, side by side, with civilized society. They must be improved, or become extinct. And it needs no moral lecture to prove, that they, who encroach upon their territories, are responsible for the effect of it—that it be not to their prejudice.

But in America, the Aborigines have from the beginning been cruelly neglected. No *efficient State* measures have ever yet been instituted for their preservation and improvement. They have been suffered to lie down and dwindle away, under all the disadvantages and annihilating influences, that have been constantly acting upon them, by an intercourse with the vicious and dishonest refuse of civilized society. And all their loss has been so much gain to their white

neighbours. They have been constantly libelled too. Having been first provoked to the atrocities of savage warfare, a deep, irradicable, and unreasonable prejudice has been cherished against them on that account. Their indolent and improvident habits have been ascribed to the incorrigible attributes of their nature. The common doctrine, at least the prevailing and practical feeling, has been:—"They are worthy of their doom." By common consent, they have been suffered to vegetate and die, without improvement, and without hope. And all the improvement they have made, has been principally effected, under these immense disadvantages, and by the insulated and single-handed efforts of benevolence. It is a general truth, that just as fast, as they have consented to resign their territories, by any persuasives, they have been taken without scruple, by State negotiations, or through the influence of pre-emption companies. There has been little anxiety, public or private, to improve, or save them. The public conscience has gradually inured itself to the spectacle of their decline and wasting away. It has been taken for granted, that they cannot be redeemed; and the deduction has been easy and natural, that the rights of such an irreclaimable race are of a separate class; and provided no shocking

outrage be committed upon them, it is hardly worthy to inquire what they are, or to attempt to define them. Themselves and their claims will soon and all be out of the way. State interests and State enterprise, the interests and enterprise of individuals and corporate companies, bearing on the same grand result,—and a general absorption, private and public, in the prosecution of interested objects, have all tended, directly or indirectly, so far as they have had any connexion or relation to the Indians, to deteriorate their condition, cloud their prospects, and by degrees to deprive them of their rights. And a long familiarity with such a spectacle had produced an obtuseness in the public conscience, as to the question of the obligations the public were under to this people, who were found in the midst of them and around them. They, who had been left to take care of themselves, it was thought, might still and for ever do it. They, who had ever been seen, since seen at all, declining and wasting, must of course come to nothing. They, whose rights had never been much respected, and never well defined and settled, might sacrifice a little to the encroachment of one, and a little to another, and nobody would be shocked, and the public would not resent it.

And such has been the true history of the ever changing condition, and relations, and doom of the American Aborigines. Even so long as the Government maintained its faith in form, and seemed to be dealing out somewhat of its bounty and benevolence, for the improvement of the Indian race, this gradual and imperceptible process of injury has been practically going on, not only by a tacit connivance from existing authorities, but most extensively in the very hands of the official agents of Government. I have been astonished, and even astounded, at the extent and amount of these practices, that have come to my knowledge. How could it be possible, therefore, that the moral sense of a community, on the question of Indian rights, in the midst of whom such practices have been so long tolerated, and such liberties have been taken, as to have acquired the right of prescription, should not be impaired?

And this is doubtless one of the great moral causes, which have induced the catastrophe:—neglect of duty and the long habit of gradually encroaching on their rights. They have been found a poor and miserable race, and it has never been a great sin to abuse them.

One other cause I shall name, is the para-

mount influence of *slavery* in the United States. One of the secrets evolved in the moral analysis of history, is, that slavery disqualifies its advocates to appreciate the rights of man. It is morally impossible, that a slave-holder, who advocates the principle of slavery, should understand the subject of social rights. He excommunicates himself from the pale of freemen, in the proper sense of this term, and relatively. For he certainly is unfit to be a member of a society of freemen, who denies to any class of his fellow-beings, what are commonly called and commonly awarded, as the natural rights of man—as the rights of human society; or who denies unrestrained personal liberty to all to do what one may lawfully do, or desire to do, under a system of equal laws, instituted for the protection of common and equal rights.

It is a grievous truth, as it is a grievous calamity, that slavery exists extensively in the United States; and must necessarily have an influence, not only over the Governments of the slave States; but as those States are so numerous, and have always been so influential, as to have maintained from the beginning more than an equal balance of power in the Federal Union, they must also exercise a paramount influence in

the General Government, on all questions, which have a relation to slavery.*

The ascendency of the slave-holding States over the rest of the Union, was demonstrated in the admission of Missouri into the family of States, in 1821, after a vigorous, but unsuccessful struggle in Congress, to impose upon her the duty of abolishing slavery, within a given period, as a condition of her elevation to the sovereign prerogatives of a sister State. It was admitted on all hands, that the agitation and determination of this question was a trial of the strength of parties in the Union, in relation to slavery. As the States were now travelling westward in the increase of the family, the question was:—Shall slavery travel with them? If once it should be conceded, that a new State, erected in the west, may have slavery, it might possibly extend itself over the continent, to the shores of the Pacific. But notwithstanding all the opposition, that could be mustered against it from the north, it failed; and Missouri is a *slave State*. The Union was never more thoroughly agitated, on a

* I say *relation* to slavery. For, although Congress has no power to legislate *over* the slavery of individual slave States—yet they may have occasion to legislate on questions, which *relate* to it generally.

question of domestic and local policy, than at this time, and on this particular question:—the north and the advocates of equal rights, pitted against the south and against the advocates of slavery. The disappointment and chagrin of the north—their mortification at this victory of the south, will never be effaced. It would not have been believed, as a subject of prediction, that this triumph could ever be achieved.

It is true, it was contended, that a State could not be on terms of equality, if it were not left to its own sovereignty to regulate this matter; as was the case with all the other States. But, as it was admitted, that every new State is a creature of Congress, it seemed a legitimate argument, that Congress must necessarily fashion the work of its own hands, and was responsible for the consequences. Although the original States had come into the federal compact, with the reservation of the right to legislate for themselves on this subject, yet Congress was evidently responsible to the world for its own creations; and as the simple and declared object of the independent organization of the Government of the United States, when they separated from Great Britain, was to secure and maintain rights far less sacred, than personal liberty; and as slavery is under the common ban of the civilized world, as an evil

that must be cured; decency, as well as propriety and consistency, seemed to demand imperatively, that Congress, in their united and high authority, should never lend their sanction, by an act of their own, to this violence done to the rights of man. Although they could not, by the terms of the federal compact, control the original States in this matter; yet were they bound, not only from respect to the acknowledged rights of man, but for consistency and credit before the world, to see, that slavery should not *extend* itself under their own jurisdiction. If any territorial section, claiming to be erected into a State, would not submit to the condition of abolishing slavery, if slavery existed there; and of never introducing it, if it did not exist, it might well be deemed a sufficient reason for disallowing the claim. But, as we have stated, the south triumphed.

Another fact shews the paramount influence of the slave States, viz. that slavery is permitted to exist in the district of Columbia, the proper national domicile, which is under the sole jurisdiction of Congress. Many efforts have been made to purge that territory of this stain; but the anti-slave influence, as yet, has proved insufficient to wipe away that national disgrace, for which, before the world, no apology can be seen.

Such being the ascendency of slavery influence in the Union, it is not difficult to see, that, as a moral cause, it may have controlled, and in my own opinion, it has controlled, the recent usurpations and outrages committed on the rights of the Indians. The sources are obvious and palpable. What State has first thrown off the disguise, and taken this bold step, and done such a shock to the moral sense of mankind? Georgia—one of the oldest and most inveterate of the slave-holding States.

It is not credible, that the bold design of breaking down the rights of the Indians at a single blow, could have been conceived and matured and actually forced into a train of execution, from any other quarter of the United States, except where slavery had blunted the moral sense of the community, and reduced the Indian to a level with the African in bondage. Accordingly we find, that the project was born and cradled in that nursery, and from that region has been pushed forward into execution.

But if this project originated in the south, how should it happen, that it pervades the Union? How should it happen that such a spectacle should be presented in the North-West Territory, as that which has claimed so much of our attention?

The answer of this question will necessarily make another disclosure, which indeed has been more than once suggested, and which is proper to be more fully opened, as the least of two evils, so far as the scandal of these transactions is concerned. Inasmuch, as the great measure and its results cannot be concealed, and are already before the world, it is better, that the whole truth, in the analysis of moral causes, should be developed, to bar certain inferences, which are not unnatural, and which would seem to impeach the institutions of the country and the general temper of the community. How is it possible, that such enormous injustice should be done in America—in the republic of the United States?—is a natural exclamation abroad, and may well excite astonishment. Is this a result of the corporate influence and operation of the institutions of the country? Is this a fair index of the temper of the people? That the reputation of both must suffer on this account is beyond a remedy; but with reasonable minds it may easily be shown, that this has come about in *spite* of the institutions of the country, and in *spite* of the virtue of the community.

The whole secret lies in the compass of a nutshell. I speak of facts, without presuming to sit in judgment upon them, except so far as is unavoidable in one's own mind. The State of

Georgia had resolved upon her course of terminating the controversy respecting the country of the Cherokees. The present Government of the United States came into power by the assistance of that State and others especially involved in the same interest; and it is assuming no more, than what is reasonable, to suppose, that the Indian policy, intended to be pursued by the successful party, was *understood.* Facts have proved, that such was the design, whether there was any concert or not. And it is no impeachment of the candidates for office to allow there *was* a concert, if the opinion, now acted upon—that it is for the real welfare of the Indians to be removed, is best—be honest, as is professed, and which I presume not to judge.

The policy, however, was new; it took the nation by surprise; the violent course adopted by Georgia was revolutionizing the entire system of the Indian relations, and the treatment which the General Government had ever been accustomed to maintain; it was disturbing treaties and breaking promises. But the policy, if adopted, must be *general,* and might probably be carried into execution, without the *appearance* of violence, except in the case of the Cherokees. To assume the broad ground, that it was best, even for the Indians themselves, to be removed, and to institute

such an extensive change, was somewhat necessary to support those of the southern States, which had within their territories numerous tribes, and which wished to get rid of them; and to make the policy general would also naturally contribute to cloud the more insulated operations of Georgia, and divert attention from the opprobrium of such a single case. It is easy to see, therefore, that this entire, sudden, and I may add, violent movement, originated in the determination of Georgia to eject the Cherokees.

I need not undertake to prove that this course is in violation of the institutions of the country, as the Supreme Court of the United States have already decided that question. That it is by no means a fair index of the general temper of the people, I do not hesitate to affirm. The people, as a body, have never acted on the question—they have had no opportunity. It has all been done by a *coup de main*, at an unexpected moment. It is true, that great pains have been taken to satisfy the dominant party, and to confound the question very improperly with general politics; and to some extent the people have been for a while deceived. But I do not hesitate to say, that the numerical fraction of the whole community, that could be brought to subscribe to these measures, when laid before them in their

naked merits, would be so trifling, as to astonish the world, that they could ever have been carried. There will doubtless be a reaction, though it is to be feared, it may come too late for the Indians—certainly too late to save the honour of the nation in this particular.

The great moral causes of this state of Indian affairs in America, as here developed, I trust, will demonstrate at least four important features:—First, that the great original sin is chargeable on the arrogant assumptions over Indian rights by those European Governments, which first took possession of America. They created and instituted a current of social relations between the native tribes and those invaders of their territories, which nothing but the better principles of a better age can rectify. Secondly, they disclose the unfortunate and potent influence of the crime of slavery, in relation to Indian rights. Thirdly, the judiciary of the United States have solemnly declared, that these measures are in violation of the institutions and engagements of the Government. And lastly, the virtue of the people, as a body, is not to be judged by these events.

It is anticipated, that these facts will be adduced, to demonstrate the imperfection of the American Government, the liability of its insti-

tutions to be perverted, the want of harmony in the working of its parts, and the danger of overthrow. These speculations we cannot control. The events have occurred—they can neither be concealed, nor defended; and it is proper, not only, that the facts should be fairly stated and the causes developed, but that the world should understand, that the injustice is no where more deeply felt and deplored, than on the very ground where it has been committed, and that those who sustain the violence make but a small fraction of the American community.

CHAPTER XV.

THE LATE INDIAN WAR IN AMERICA OF 1832, AND A VINDICATION OF THE INDIANS FROM THE CHARGE OF WAGING UNPROVOKED HOSTILITIES AGAINST THE WHITES.

"SEVERE as is the lesson to the Indians, it was rendered necessary by their *unprovoked aggressions.*" So says the President of the United States, in his message to Congress, delivered at the opening of the session in December, 1832, in reference to the termination of Indian hostilities, which had been waged in the upper regions of the Mississippi, during the spring and summer of that year, between the United States and the allied tribes of the Sauks and Foxes. In this connexion, the President gives a very brief account of this war, praises the promptitude and efficiency of the troops, which were sent to quell the disturbances and chastise these barbarians; and congratulates

Congress on the successful termination of the affair. The Indians, it would seem, suffered severely. And the severity of their chastisement, the President says, "was rendered necessary by their *unprovoked* aggressions." "*Unprovoked.*" And thus, from the first settlement of America, down to this time, the world have been told and made to believe, that the hostilities, waged by Indians on the white settlements, were *unprovoked.* The Indians have never had an opportunity "to show cause." And the cruelties of their warfare have been customarily such, as not only to excite horror at the tale of their barbarities; but as to create a universal prejudice, and prepare the minds of all to believe, that a people, who could be guilty of these atrocities, might easily be supposed capable of making aggression without provocation, merely from the love of blood and plunder. Besides, it is not very natural for any community, by their official organs, to commit such a libel on themselves, as to confess before the world, that they deserved the wars and ravages, which may have been brought upon them. They are always sure to clear their own side of all fault. It is so in all breaches between civilized nations; and so far as I have observed, in all contests between civilized communities and barbarians. Barbarians, doubtless,

have reasons among themselves satisfactory; but they have no means of recording them, to be submitted to posterity, and no means of publishing them to the world at the time. Generally the history of Indian wars in America, proves the Indians always in the wrong—to have made their aggressions "unprovoked." From books, every child, every man, and all the world receive this impression. In addition to this, as is natural enough, the Indian is robbed of all sympathy, in the condition of his discomfiture, by the story and recollection of his savage cruelties—of the scalps he has taken, of the women and children he has butchered, and of the captives he has carried away and sacrificed by torture. There is no chance of his obtaining a hearing, much less of a vindication, so long as the very thought of him, as an enemy, affrights and shocks humanity.

Myself, from the nursery to the school, and from the school to manhood, and by all my reading, had been thoroughly imbued with this doctrine:—that Indians wage war "unprovoked," and butcher without mercy. I have given sufficient reasons, in a former discussion akin to this, why the American Aborigines, in war, must be expected to conduct it in their own way. And I do not expect, by any abatements I can offer,

nor by any reasonings, to make it less horrible, than it is. But yet I will notwithstanding venture to aver, that there is some apology to be found in their history.

As to the fact of the Indians making war "unprovoked," as a character belonging to them, I have entirely changed my opinion, so far as respects their contests with the whites; and I think so also, as to the wars among themselves. But that is not to the present purpose. With few exceptions, (and those I could not specify) I fully believe, they have never made war upon the whites, when, considering what they are, they have not been *well provoked.* I do not mean by this to justify war, in their case, or in any other. I confess myself more than half a Quaker on this subject. But I am speaking of the *fact* of provocation—of a sense of injury. The American Indians have always stood in terror of the whites, and have never, as a prevailing disposition, sought to embroil themselves with them in a controversy of arms. I speak this, as my deep conviction, although I have not time to enter into proofs. My principal aim here is to say a little of the merits of the particular controversy alluded to, in the passage I have quoted from the President's message.

It happened some half-dozen years ago, or

more, that a murder, or massacre of some watermen on the Mississippi river, was committed by those very Indians, who have so recently been at war with the United States, if such a quarrel is to be dignified with this name. As might be expected, the event of the murder made a good deal of clamour. The authorities of the Government were put in requisition to investigate the affair, and to demand satisfaction. The murderers were required to be given up, that they might suffer capital punishment, as an example; and according to the best of my recollections, they were tried, convicted, and executed. If the event were worthy of such a notice, we might perhaps expect to find, on the file of Congressional documents for the time, and in the President's message, some such passage as this: — "An atrocious and wanton murder of three (or more, I have forgotten the number) of our citizens, was committed last summer, on the banks of the Mississippi, by a savage horde of the Sauks and Fox Indians, who fired from an ambush, on the banks of the river, as their victims were peaceably floating down the stream, unconscious of their danger. I immediately sent a commission, supported by an armed force, with full powers to investigate the case, and to convict and punish the offenders. They have been

delivered up, and as an example to others, have suffered the penalty due to their crime." "An atrocious and *wanton* murder," it was called and thought to be at the time. The people of the whole country were horror-struck at the intelligence, and made deeply anxious for all their fellow-citizens, who might have occasion to do business on that frontier. And the energetic measures of Government inflicted a far greater terror on the poor Indians. I say:—*poor* Indians, as will soon appear, notwithstanding the libel of this "wanton" and "unprovoked" outrage stands against them to this day, before the public of the United States, as deserved and true.

When I was in that quarter, in the summer of 1830, I happened incidentally to be made acquainted with the facts of the case. These unoffending citizens of the United States, so wantonly murdered, turned out to have been part of a vicious and worthless crew of watermen, who, late from New Orleans, the den of all vice, fell upon an Indian village, on those upper waters of the Mississippi, when the men of the village were absent on a hunting expedition, and committed crimes, which cannot be named. And even with this hint, imagination will never reach the worst and

still more nameless part of their offending. The watermen continued their course up the river, and the men of the village returned to be made acquainted with their deeds. Maddened — exasperated to fury, they awaited the return of these wretches, and sought and obtained their revenge, in the way, that has been suggested— although they could never obtain the reparation of their injury. And these watermen, thus meritoriously visited, whose punishment was far lighter than their crimes, have been held up before the public, as *wantonly murdered.* What else could be expected of the Indian, who knows not how to bring such wretches to justice, under the forms of civilized society? — but who *did* know, in this instance, that he never could prosecute them there? Was he not "*provoked?*"

Thus are Indians, unknown to the world, continually subject to the incursions and remorseless depredations of vicious white men.

I learned at the same time, that these very Indians, as well as other tribes in those regions, were becoming exceedingly suspicious of the designs of white men on their rights, and on their country; as well they might be. For such was the fact. And they had heard of it in various forms; and been convinced of it. They had many and good reasons to withhold confidence,

even from Government. In their ignorance, their imagination magnified and distorted every shadow of evil, and threw over it a thousand false colours. Who does not love his country? Who would not fight for the home of his fathers, so long as there is hope of defending it? Will any man blame the Indian for doing that, which he would do for himself?—and for the lack of doing which, he would deem any civilized man base, and unworthy of respect? The remote and wild Indian, born and bred and always buried in the forest, does not know the power of his antagonist, when, with a little band, he attempts to grapple with a powerful and civilized nation. He may err in judgment, when he is right in feeling. He has less knowledge and less skill, but it does not follow, that he has less virtue. And all his rights, which he feels and knows no man, or power of man, may lawfully wrest from him, are as dear to him, as they can be to a white man.

For myself, I have not a single doubt, that if the chapter of reasons for the recent Indian war in America, as they existed in the minds of the Sauks and Foxes, were open before the world, all would agree in the verdict, that they had as much and as good provocation for these "aggressions," so called, as they had to shoot the

offending and guilty watermen, the nature and extent of whose crimes decency forbids to mention. I do not, however, mean reasons of the same class; but reasons equally calculated to rouse the Indian's passions for revenge. It will not be understood, that I am glad for this war; that I would have recommended it. I speak only of the simple fact of *provocation* to such a nature and to such a mind, as that of the Indian—(and he must be taken as he is)—I speak of provocation, of which I certainly know, that it could not have been wanting, and that of a very aggravating character.

From all I have been able to learn—and I have had opportunities to know not a little—of the injuries done to Indians, public and private, I have admired their patient and long and submissive endurance of the evils, inflicted on them. They dread war—and above all with the whites. If they venture upon it, as aggressors, it is morally certain, that they have been *exasperated* with provocation.

Such have been the uninterrupted series of injuries done to the Indians, and practised upon them, in the whole history of their connexions with the European race; and such is their deep and sullen sense of them; that, but for the consciousness of their own weakness, they might be

expected to rise at once and all together for the extermination of every white man from the continent. And should they undertake the hazardous and hopeless enterprise, the common notions of right and distributive justice among men, would fully sustain them.

But as it happens, every struggle they make, is a dying struggle. The vengeance, which falls back upon their heads, is sweeping and terrible. And at the opening of the next Congress, the President comes, bearing the flag of victory, and flourishing in his triumph, to announce the grateful intelligence, and to conclude the story of the tragedy, by saying: "Severe as is the lesson to the Indians, it was rendered necessary by their *unprovoked* aggressions!"

This late Indian war has furnished an apology, and presented an admirable opportunity, for clearing the whole North-West Territory of Indians, at a single dash. The surest and shortest way to get rid of the Indians, is to provoke them to fight. But when once their grave is made, let not their ashes be insulted by announcing to the world:—that their aggressions were "unprovoked!"

It was the apprehension of losing their country, and of being forced away from the graves of their fathers—an apprehension working and festering

in their minds for years, and not without reason—that finally goaded these Indians to the desperate and fatal encounter; and the terms of peace were, that they should go beyond the Mississippi, to prevent which they hazarded the unequal war.

I have not made this extract from the President's message a text, for the sake of finding fault with him personally. It was natural to say some such thing in such a place; and no Government is expected to impeach itself in such a matter. Indeed, I have no doubt, that the President was perfectly honest in this statement, and that the community generally have been under the same impression.

It is not unknown, that the prescribed reports of the official agents of all Governments, are ordinarily *smooth* things; especially where a difficulty is to be encountered. I have happened to know so much of the terrible havoc made on the social and political rights of the American Indians, even by the agents of Government, that I repose very little confidence in the official reports of those agents. The world — the people of the country do not know—cannot know the truth. The poor Indians have nobody to show their cause.

CHAPTER XVI.

THE REVENUE ACCRUING TO THE UNITED STATES FROM THE SALE OF INDIAN LANDS, AND THE DUTY OF APPROPRIATING THEM FOR THE BENEFIT OF THE INDIANS.

If the Indians are not to be benefited by a removal, who are? And how much? Provided there shall prove to have been no mistake in the grand speculation — a mistake, the results of which shall be found vested in the hands of that high and mighty Providence, who "ruleth in the hosts of heaven and among the inhabitants of the earth," and who "putteth down one and setteth up another" of the nations and kingdoms of this world, it is not difficult to see, who are to be the gainers by this tragical game. In any case, the immediate acquisitions of territory and the means of wealth, to the citizens and the several commonwealths of the American Republic, and to the

nation itself, in consequence of the ejectment of the Indians from all their grounds east of the Mississippi, are immense — are incalculable. I regret, that I have not the means of an exact measurement of the territories, which have been, and which are about to be, resigned by the Indians, in their unavoidable submission to this measure. I have, however, in my possession, a few data, by which we can come to estimates, sufficiently accurate for our present purpose. It is enough, that we can arrive at *nearly* the amount of territorial acquisitions, whether our assumed specifications shall be a little more, or a little less, than the facts of the case may ultimately prove.

I find from a statement in the North American Review, for October, 1830, that all the lands acquired and to be acquired by Georgia within her own limits, in consequence of her negotiations with the General Government, in 1802, are estimated at 25,000,000 of acres; that the major fraction, 20,000,000, had been actually acquired before the recent quarrel with the Cherokees; and that all this ado has been made to eject the Cherokees from the small residue of 5,000,000 of acres! I do not know what amount is to be acquired, in the purchases principally made already by the General Government, of the tribes having held possessions in the States of Alabama,

Mississippi, and Tennessee, and also in the Floridas. We will say 40,000,000 of acres in all. I think it cannot be less. The vast country, comprehended in the peninsula of Michigan and the North-West Territory, the latter lying within the Lakes Michigan and Superior and the river Mississippi, nearly all of which and both, a few years since, belonged to the Indians, and of which they have very little left now, and soon will have none, except perhaps a few thousand acres reserved for the New York Indians at Green Bay;—all this country I am embarrassed how to estimate. Say, that the parts, rightfully claimed by the Indians, and resigned by them, amount to 100,000,000 of acres. And for a gross estimate of the remainder, lying in different States east of the Mississippi, we will say: — 50,000,000 of acres. The whole amount of acres, the Indian title of which has been required to be extinguished within a few years, in order to dispossess the aboriginal tribes entirely of all territorial claims east of the river Mississippi, may be stated in the gross, at 215,000,000. I am not aware, that this estimate is too large. I am quite sure, indeed, that unless the Indians have been very unjustly restricted by claims asserted by Government, the fair amount of the whole is more likely to exceed this calculation, than to fall

short of it. I do not, however, pretend to minute accuracy.

The Government price of these lands to emigrant settlers, who are every year going in swarms to possess them, is *one dollar and twenty-five cents* (a small fraction more than the English crown) per acre; the gross amount accruing from which, will be: — 268,750,000 dollars. The expenses of surveys, &c. will of course subtract a small fraction of this.

It is known, that the Government of the United States has already liquidated the last fraction of the national debt. The annual revenue from the tariff of duties on imports and from other sources, independent of the public lands, I believe, is about double of the expenses of the Government and other national institutions. It is obviously unnecessary, therefore, to appropriate a single fraction of the revenue from the sale of public lands, for the maintenance of the national institutions, or for any conceivable national purposes, allowable by the constitution. It is true, that a very small part of the avails of these lands goes to Georgia, and perhaps a little to some other States. But, as none of these States are embarrassed with debt, so far as I know, the wealth of a State is, in any case, so much the wealth of the nation, of which she is an integral

part. Here, then, is this immense capital of 268,750,000 dollars accruing to the wealth of the nation, *as* a nation, from the sale of lands, acquired of the Indians east of the Mississippi! And under the present and current system of the national economy, in which all changes are always slow and small, it will require the greatest ingenuity of their greatest statesmen to devise a way to dispose of it!

But it is said, that the price paid the Indians for these lands, and the expenses of removing them, &c. must be subtracted from this. The average price paid the Indians for their lands per acre is, perhaps, *one five-hundreth part of a dollar;* or suppose it be twice, or thrice the amount of this fraction. The whole amount of the price of the lands, and of the expenses of removal, embracing all contingencies, may be met with the excess of national revenue, above the necessities of the Republic, reasonably to be expected from other sources, without touching the income from the sale of Indian lands.

But this immense revenue, accruing to the nation, as such, from the sale of these territories, is but a small fraction of the advantages, which, in political economy, are considered, and no doubt with justice, as constituting the real and substantial wealth of a nation. It is the labour,

bestowed upon these lands by the individuals, who shall have purchased them of the nation, that renders their value, and the wealth derived from them, incalculable. The price of these lands, the moment they are occupied and placed under improvement by the settlers, begins to rise in the market, from their original cost, indefinitely, to five, ten, twenty, fifty, and even an hundred dollars per acre—according to the degrees of improvement, and their relative situation and advantages. In villages and towns, almost without number, which a few years ago had no name in the west of the United States, and whose prospects of importance are continually rising, lots of land are now sold by the *foot;* and at prices, which I should hardly dare name, lest I should shock common belief. The individual wealth created and accumulated in a few short years, by the industry and perseverance of new settlers, in these new territories, is not to be counted. Their farms, their crops, their flocks and herds, their houses and barns, their villages and towns, their roads, schools and seminaries of learning, churches and other public edifices, their canals and other public works, and numberless improvements, public and private, and the amazing facilities, which all these creations afford, of augmenting private and public revenues;—

all these go into the account of national wealth. All these creations of human industry are even now being erected upon, and will soon spread themselves over, the wide territories, which but very recently were possessed and occupied by Indians.

Then surely they must be wanted; and what a pity they should be left unimproved! They are no doubt covetable. For Indians, in their last retreats, if permitted to select for themselves, are always found on the best lands; and as soon as they are exposed in the market by Government, they are rapidly taken up. As to the argument of their being *wanted*, and that they will be more productive to the world, in the hands of the whites, I have nothing to say; and for this simple reason:—that I know of no code of morals to support such an argument, for such a purpose. America and the world are yet wide enough for the lawful purposes of all human beings. And it may be doubted whether the time will ever come, when the necessities of mankind will oblige them to do violence to each other, in order to live; or when those necessities will ever make an apology for such a course of procedure, as that, by which the American Aborigines are now being driven from the east to the west.

It is proper in this place to observe, that one source of wealth, expected by Georgia, besides the possession and use of the Cherokee lands, is the *gold mines*, which have recently been discovered and opened there. Whether this was in part the temptation, which urged her so hastily to do such an amazing violence, is perhaps more probable, than the proof is tangible. The mines have been supposed to be immensely and inexhaustibly rich. It is these mines, to which reference is made in the letter of Chancellor Kent to Judge Clayton, in the Appendix; and for a decision concerning which, the latter gentleman was dismissed from his presidency over a court in Georgia; that is, because he conscientiously gave judgment in favour of the Cherokees, and against the State, whose officer he was.

The question naturally arises here—what *will* be done, and what *ought* to be done with the revenues accruing from the sale of these lands, on the east of the Mississippi, which have been and are yet to be ceded by the Indians to the Government of the United States? When the people of that country shall be informed on this subject, so as to be prepared to entertain proper sentiments in regard to the treatment, which the Indians have suffered from the hands of their Government, this question, I trust, will receive

a grave consideration. Notwithstanding, that the people of the United States will be held responsible, as a nation, for these transactions, it is yet true, that it would be unfair to judge them, or to estimate their disposition towards the Indians, by this rule. As a nation they do not yet understand the case; it is impossible they should. The change of policy, and the institution of its train of measures, have been too sudden and too recent to have given the opportunity for the *people* to know and judge of its merits. Their conscience, as a nation, has not yet been touched; it was impossible in the circumstances, that it could be. They have never been able to form a deliberate and an impartial judgment on the great question. But from the very nature of the Government, and from the habits of the people, the time must come, when the merits of the case will stand before them in their sober and true light. And if they do not then turn their eyes and hearts, with deep repentings, on that injured people, I will confess myself mistaken in all my impressions of their character, and join with the public reprobation of the world, that they are a nation recreant to their own principles, to justice, and to humanity.

And what can they do then less, as an atonement for these injuries of the Aboriginal race,

than resolve, that every penny of the public income from the sale of lands, which have been ceded by the Indians, shall be a sacred trust for their benefit? Nay, that their magnanimity shall not stop there, if any thing more may be necessary to redeem and save the people, who have been so long "scattered" and so cruelly "peeled." It may possibly be even well, that this injustice has risen to such a pitch and become so flagrant, if it shall be overruled to work thorough repentance in the heart of the nation, that is responsible for their oppressions, so that they shall resolve to spare no pains and no expense; that they will go after those, whom they have ejected from their own rightful territories, and supplanted; that they will gather them up in their arms, raise them to the proper dignities of human society, and thoroughly atone before heaven and the world the injuries they have done them, or unwittingly permitted to be done. This is indeed a hope I have allowed myself to cherish—and the only and last hope I can reasonably indulge for the American Indians. It is perhaps *possible* to save them; but it must be a great and persevering effort of a great and united people, whose virtue in the undertaking shall be equal to their obligations and to the exigency; it must be on a scale of expenditure and of high

endeavour, it must be a great State enterprise, of which there has been no former type. Far it had been from me to undertake this office of exposing their injuries and asserting their claims, especially as it involves the honour of my own country, if I had not some reason to hope, that, among the other influences operating to work conviction of these sacred obligations in the hearts of the people of that country, this feeble effort, if it should obtain any notice, might send back at least a faint echo of the public sentiments of the world to aid and quicken the hoped-for-result. The cause is paramount to the minor interests of a nation—it is the cause of humanity. I would not unnecessarily expose the faults of my own country;—much less would I be silent over the injuries of the injured, if I might hope to relieve them.

I have been most happy to observe, that the Secretary at War of the United States, in his report of Nov. 25, 1832, to the President, and through him to Congress and the nation, has suggested the very plan now under consideration of appropriating *all* the proceeds of Indian lands for their improvement:—

"It cannot be doubted," he says, "that a course, so consistent with the dictates of justice, and so honourable to the national character,

would be approved by public sentiment. Should we hereafter discard all pecuniary advantage in our purchases from the Indians, and confine ourselves to the great objects of their removal and establishment, and *take care that the proceeds of the cessions are applied to their benefit*, and in the most salutary manner, we should go far towards discharging the great moral debt, which has come down to us, as an inheritance, from the earlier periods of our history, and which has been unfortunately increased, during successive generations, by circumstances beyond our control. *This policy would not be less wise than just.* The time has passed away, if it ever existed, when a revenue derived from such a source was necessary to the Government. The remnant of our aboriginal race may well look for the *full value*, and that usefully applied, of the remnant of those *immense possessions*, which have passed from them to us, and left no substantial evidences of permanent advantage to them."

I confess myself gratified by this expression, coming from such a quarter, and at so early a period, in the shape of a recommendation to the national legislature. It cannot now be lost sight of; and if it is not soon taken up and acted upon energetically, under a conscientious

sense of the demands of justice; if Congress does not soon resolve itself into a board of trust for the safe keeping and faithful disbursement of every farthing of income from Indian lands, for the benefit of Indians, and to incur any other expense, which their good may require, they will prove themselves delinquent in one of the highest and most sacred duties. I persuade myself, that the voice of the nation will demand it, and that it will be done. The injuries of that people have come to a height, which demands an atonement. And it was especially befitting the present Secretary at War, that he should be the first to propose it.

APPENDIX.

APPENDIX.

No. I.

The Opinion of the Supreme Court of the United States, by Chief Justice MARSHALL, *in the Case of the Cherokee Indians, January Term,* 1832.

SAMUEL A. WORCESTER, *v.* THE STATE OF GEORGIA.

THIS cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a State, a member of the Union, which has exercised the powers of government over a people who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the State of Vermont, condemned to hard labour for four years in the penitentiary of Georgia, under colour of an

act which he alleges to be repugnant to the constitution, laws, and treaties of the United States.

The legislative power of a State, the controlling power of the constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, are all involved in the subject now to be considered.

It behoves this Court, in every case, more especially in this, to examine into its jurisdiction with scrutinizing eyes, before it proceeds to the exercise of a power which is controverted.

The first step in the performance of this duty, is the inquiry whether the record is properly before the Court.

It is certified by the Clerk of the Court which pronounced the judgment of condemnation under which the plaintiff in error is imprisoned, and is also authenticated by the seal of the Court. It is returned with, and annexed to a writ of error issued in regular form, the citation being signed by one of the Associate Justices of the Supreme Court, and served on the Governor and Attorney General of the State more than thirty days before the commencement of the term to which the writ of error was returnable.

The Judicial act,* so far as it prescribes the

* Judicial Act, sec. 22, 25. Vol. II. pp. 64, 65.

mode of proceeding, appears to have been literally pursued.

In February, 1797, a rule* was made on this subject, in the following words: "It is ordered by the Court that the Clerk of the Court to which any writ of error shall be directed, may make return to the same by transmitting a true copy of the record, and of all proceedings in the same, under his hand and the seal of the Court."

This has been done. But the signature of the Judge has not been added to that of the Clerk. The law does not require it. The rule does not require it.

In the case of Martin, *v.* Hunter's† lessee, an exception was taken to the return of the refusal of the State Court to enter a prior judgment of reversal by this Court, because it was not made by the Judge of the State Court to which the writ was directed; but the exception was overruled, and the return was held sufficient. In Buel *v.* Van Ness,‡ also a writ of error to a State Court, the record was authenticated in the same manner. No exception was taken to it. These were civil cases. But it has been truly said at the bar, that, in regard to this process, the law

* 6th Wh. Rules. † 1st Wh. 30, 61.
‡ 8th Wh. 312.

makes no distinction between a criminal and civil case. The same return is required in both. If the sanction of the Court could be necessary for the establishment of this position, it has been silently given.

M'Culloch *v.* the State of Maryland,* was a *qui tam* action, brought to recover a penalty, and the record was authenticated by the seal of the Court and the signature of the Clerk, without that of a Judge. Brown et al. *v.* the State of Maryland, was an indictment for a fine and forfeiture. The record in this case, too, was authenticated by the seal of the Court and the certificate of the Clerk. The practice is both ways.

The record, then, according to the Judiciary act, and the rule and practice of the Court, is regularly before us.

The more important inquiry is, does it exhibit a case cognizable by this tribunal?

The indictment charges the plaintiff in error and others, being white persons, with the offence of "residing within the limits of the Cherokee nation without a licence," and "without having taken the oath to support and defend the Constitution and laws of the State of Georgia."

The defendant in the State Court appeared in proper person, and filed the following plea:

* 4th Wh. 316.

"And the said Samuel A. Worcester, in his own proper person, comes and says, that this court ought not to take further cognizance of the action and prosecution aforesaid, because, he says, that on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county Gwinnett, or elsewhere within the jurisdiction of this court: and this defendant saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation, in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it: that he was, at the time of his arrest, engaged in preaching the Gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the Government of the United States for the civilization and improvement of the Indians; and that his

residence there, for this purpose, is the residence charged in the aforesaid indictment; and this defendant further saith, that this prosecution of the State of Georgia ought not to have or maintain, because, he saith, that several treaties have, from time to time, been entered into between the United States and the Cherokee nation of Indians, to wit: at Hopewell, on the 28th day of November, 1785; at Holston, on the 2d day of July, 1791; at Philadelphia, on the 26th day of June, 1794; at Tellico, on the 2d day of October, 1798; at Tellico, on the 24th day of October, 1804; at Tellico, on the 25th day of October, 1805; at Tellico, on the 27th day of October, 1805; at Washington city, on the 7th day of January, 1805; at Washington city, on the 22d day of March, 1816; at the Chickasaw Council House, on the 14th day of September, 1816; at the Cherokee Agency, on the 8th day of July, 1817; and at Washington city, on the 22d day of February, 1819—all of which treaties have been duly ratified by the Senate of the United States of America; and by which treaties, the United States of America, acknowledge the said Cherokee Nation to be a Sovereign Nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several States

composing the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee Nation, on the east of the Mississippi, has been solemnly guaranteed to them, all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie without the jurisdiction of the several States composing the Union of the United States; and it is thereby specially stipulated, that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the Governor of a State, or from some one duly authorized thereto by the President of the United States; all of which will more fully and at large appear, by reference to the aforesaid treaties. And this defendant saith, that the several acts charged in the bill of indictment, were done, or omitted to be done, if at all, within the said territory so recognized as belonging to the said nation, and so, as aforesaid, held by them, under the guarantee of the United States; that, for those acts, the defendant is not amenable to the laws of Georgia, nor to the jurisdiction of the courts of the said State; and that the laws of the State of Georgia, which

profess to add the said territory to the several adjacent counties of the said State, and to extend the laws of Georgia over the said territory, and persons inhabiting the same; and, in particular, the act on which this indictment *versus* this defendant is grounded, to wit: 'An act entitled an act to prevent the exercise of assumed and arbitrary power, by all persons, under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory,' are repugnant to the aforesaid treaties, which, according to the Constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect; that the said laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee Nation and the said United States of America, as above recited: also, that the said laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control the intercourse with the

said Cherokee nation, which, by the said Constitution, belongs exclusively to the Congress of the United States; and because the said laws are repugnant to the statute of the United States, passed on the — day of March, 1802, entitled 'An Act to regulate Trade and Intercourse with the Indian Tribes, and to preserve Peace on the Frontiers:' and that, therefore, this Court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences alleged in the bill of indictment, or any of them: and, therefore, this defendant prays judgment whether he shall be held bound to answer further to said indictment."

This plea was overruled by the Court. And the prisoner, being arraigned, pleaded, Not guilty. The jury found a verdict against him, and the Court sentenced him to hard labour, in the penitentiary, for the term of four years.

By overruling this plea, the Court decided that the matter it contained was not a bar to the action. The plea, therefore, must be examined for the purpose of determining whether it makes a case which brings the party within the provisions of the 25th section of the "Act to establish the judicial Courts of the United States."

The plea avers that the residence, charged in the indictment, was under the authority of the President of the United States, and with the permission and approval of the Cherokee nation; that the treaties subsisting between the United States and the Cherokees, acknowledged their right as a sovereign nation to govern themselves and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America; that the act under which the prosecution was instituted is repugnant to the said treaties, and is, therefore, unconstitutional and void; that the said act is, also, unconstitutional; because it interferes with, and attempts to regulate and control, the intercourse with the Cherokee nation, which belongs, exclusively, to Congress; and, because, also, it is repugnant to the statute of the United States, entitled " An Act to regulate Trade and Intercourse with the Indian Tribes, and to preserve Peace on the Frontiers."

Let the averments of this plea be compared with the 25th section of the Judicial Act.

That section enumerates the cases in which the final judgment or decree of a State Court may be revised in the Supreme Court of the United States. These are, " where is drawn in

question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favour of such their validity; or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission."

The indictment and plea, in this case, draw in question, we think, the validity of the treaties made by the United States with the Cherokee Indians. If not so, their construction is certainly drawn in question; and the decision has been, if not against their validity—" against the right, privilege, or exemption, specially set up and claimed under them." They also draw into question the validity of a statute of the State of Georgia, " on the ground of its being repugnant to the Constitution, treaties, and laws of the United States, and the decision is in favour of its validity."

It is, then, we think, too clear for controversy, that the act of Congress, by which this Court is constituted, has given it the power, and, of course, imposed on it the duty of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the judicial department have no discretion in selecting the subjects to be brought before them. We must examine the defence set up in this plea. We must inquire and decide whether the act of the Legislature of Georgia, under which the plaintiff in error has been prosecuted and condemned, be consistent with, or repugnant to, the Constitution, laws, and treaties, of the United States.

It has been said at the bar, that the acts of the Legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighbouring counties of the State, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts, that "All white persons residing within the limits of the Cherokee nation on the first day of March next, or at any time thereafter, without a license or permit from his Excellency the Governor, or from such agent as his

Excellency the Governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanour, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labour, for a term not less than four years."

The 11th section authorizes the Governor, "should he deem it necessary for the protection of the mines, or the enforcement of the laws in force within the Cherokee nation, to raise and organize a guard," &c.

The 13th section enacts, "that the said guard, or any member of it, shall be, and they are hereby authorized and empowered to arrest any person legally charged with or detected in a violation of the laws of this State, and to convey, as soon as practicable, the person so arrested, before a justice of the peace, judge of the superior, or justice of inferior court of this State, to be dealt with according to law."

The extra-territorial power of every legislature being limited in its action, to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry which the

constitution and laws impose on this court, is an examination of the rightfulness of this claim.

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered which annul the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several Governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the

Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred their rights over hunters and fishermen, or agriculturists and manufacturers?

But power, war, conquest, give rights which, after possession, are conceded by the world, and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin; because holding it in our recollection might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all should acknowledge, and which should decide their respective rights *as between themselves.* This principle, suggested by the actual state of things, was "that discovery gave title to the Government by whose subjects or by whose authority it was made, against all other European

Governments, which title might be consummated by possession."*

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil, and making settlements on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it: not one which could annul the previous right of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as original occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case by the particular Government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political; but no attempt, so far as is known, has been made to enlarge them. So far as they

* Wheaton, 573.

existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects, who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport generally to convey the soil, from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the

exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown did not affect to claim, nor was it so understood.

The power of making war is conferred by these charters on the colonies, but *defensive* war alone seems to have been contemplated. In the first charter to the first and second colonies, they are empowered, "for their several *defences* to encounter, expulse, repel, and resist, all persons, who shall, without license," attempt to inhabit "within the said precincts and limits of the said several colonies, or that shall enterprise, or attempt at any time hereafter, the least detriment or annoyance of the said several colonies or plantations."

The charter to Connecticut concludes a general power to make defensive war with these terms: "And upon *just causes* to invade and destroy the natives, or other enemies of the said colony."

The same power, in the same words, is conferred on the Government of Rhode-Island.

This power to repel invasion, and, upon just cause, to invade and destroy the natives, authorizes offensive as well as defensive war, but only "on just cause." The very terms imply the existence of a country to be invaded, and of an enemy who has given just cause of war.

The charter to William Penn contains the following recital: "And because, in so remote a country, near so many barbarous nations, the incursions, as well of the savages themselves as other enemies, pirates and robbers, may probably be feared, therefore we have given," &c. The instrument then confers the power of war.

These barbarous nations whose incursions were feared, and to repel whose incursions the power to make war was given, were surely not considered as the subjects of Penn, or occupying his lands during his pleasure.

The same clause is introduced into the charter to Lord Baltimore.

The charter to Georgia professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, "at present waste and desolate." It recites:—"And whereas our provinces in North America have been frequently ravaged by Indian enemies, more especially that of South Carolina, which, in the late war, by the neighbouring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; and our loving subjects who now inhabit there, by reason of the smallness of their numbers, will,

in case of any new war, be exposed to the like calamities, inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages."

These motives for planting the new colony are incompatible with the lofty ideas of granting the soil, and all its inhabitants, from sea to sea. They demonstrate the truth, that these grants asserted a title against Europeans only, and were considered as blank paper, so far as the rights of the natives were concerned. The power of war is given only for defence, not for conquest.

The charters contain passages, showing one of their objects to be the civilization of the Indians, and their conversion to Christianity—objects to be accomplished by conciliating conduct, and good example; not by extermination.

The actual state of things, and the practice of European nations, on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims and the charters they granted. Their pretensions unavoidably interfered with each other; though the discovery of one was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts arose between them, which gave importance and

security to the neighbouring nations. Fierce and warlike in their character, they might be formidable enemies, or effective friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominion over their persons, their alliance was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe; lavish in professions of duty, and affection, in return for the rich presents they received; so long as their actual independence was untouched, and their right to self-government acknowledged, they were willing to place dependence on the power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country: and this was probably the sense in which the term was understood by them.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt, on the part of the crown, to interfere with the internal affairs of the Indians, further than to keep out the agents of foreign

powers, who, as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self-government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr. Stuart, superintendent of Indian affairs, in a speech delivered at Mobile, in the presence of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says, "Lastly, I inform you that it is the King's order to all his governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly all individuals are prohibited from purchasing any of your lands; but, as you know, that your white brethren cannot feed you when you visit them, unless you give them grounds to plant, it is expected that you will cede lands to the King for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done, for the future, at a public meeting of your nation, when

the governors of the provinces, or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting-grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with you will be faithfully kept, so it is expected that you, also, will be careful strictly to observe them."

The proclamation issued by the King of Great Britain, in 1763, soon after the ratification of the articles of peace, forbids the governors of any of the colonies to grant warrants of survey; or pass patents upon any lands whatever, which not having been ceded to, or purchased by us (the King) as aforesaid, are reserved to the said Indians, or any of them.

The proclamation proceeds, "And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve, under our sovereignty, protection and dominion, for the use of the said Indians, all the lands and territories" "lying to the westward of the sources of the rivers which fall into the sea, from the west and northwest as aforesaid: and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our

especial leave or license for that purpose first obtained."

"And we do further strictly enjoin and require all persons whatever, who have, either wilfully or inadvertently, seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to, or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements."

A proclamation issued by Governor Gage, in 1772, contains the following passage: "Whereas many persons, contrary to the positive orders of the King, upon this subject, have undertaken to make settlements beyond the boundaries fixed by the treaties made with the Indian nations, which boundaries ought to serve as a barrier between the whites and the said nations;" particularly on the Ouabache, the proclamation orders such persons to quit these countries without delay.

Such was the policy of Great Britain towards the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical exposition of the charters she had granted; she considers them as nations capable of maintaining the relations of peace and war; of governing themselves, under

her protection; and she made treaties with them, the obligation of which she acknowledged.

This was the settled state of things when the war of our Revolution commenced. The influence of our enemy was established; her resources enabled her to keep up that influence; and the colonists had much cause for the apprehension that the Indian nations would, as the allies of Great Britian, add their arms to hers. This, as was to be expected, became an object of great solicitude to Congress. Far from advancing a claim to their lands, or asserting any right of dominion over them, Congress resolved "that the securing and preserving the friendship of the Indian nations, appears to be a subject of the utmost moment to these colonies."

The early journals of Congress exhibit the most anxious desire to conciliate the Indian nations. Three Indian departments were established, and commissioners appointed in each, "to treat with the Indians in their respective departments, in the name and on behalf of the united colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions."

The most strenuous exertions were made to procure those supplies on which Indian friendship

was supposed to depend, and every thing which might excite hostility was avoided.

The first treaty was made with the Delawares, in September, 1788.

The language of equality in which it is drawn evinces the temper with which the negotiation was undertaken, and the opinion which then prevailed in the United States.

"1st. That all offences or acts of hostility, by one or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

"2d. That a perpetual peace and friendship shall, from henceforth, take place, and subsist between the contracting parties aforesaid through all succeeding generations: and if either of the parties are engaged in a just and necessary war, with any other nation or nations, that then each shall assist the other, in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation," &c.

3d. The third article stipulates, among other things, a free passage for the American troops through the Delaware nation, and engages that they shall be furnished with provisions and other necessaries at their value.

"4th. For the better security of the peace and

friendship now entered into by the contracting parties against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders, by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs and usages of the contracting parties, and natural justice," &c.

5th. The fifth article regulates the trade between the contracting parties, in a manner entirely equal.

6th. The sixth article is entitled to peculiar attention, as it contains a disclaimer of designs which were, at that time, ascribed to the United States, by their enemies, and from the imputation of which Congress was then peculiarly anxious to free the Government. It is in these words: "Whereas the enemies of the United States have endeavoured by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians, and take possession of their country: to obviate such false suggestion, the United States do engage to guaranty to the aforesaid nation of Delawares, and their heirs,

all their territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast, the chain of friendship now entered into."

The parties further agree, that other tribes, friendly to the interest of the United States, may be invited to form a State, whereof the Delaware nation shall be the head, and have a representation in Congress.

This treaty, in its language, and in its provisions, is formed, as near as may be, on the model of treaties between the crowned heads of Europe.

The sixth article shows how Congress then treated the injurious calumny of cherishing designs unfriendly to the political and civil rights of the Indians.

During the war of the Revolution, the Cherokees took part with the British. After its termination, the United States, though desirous of peace, did not feel its necessity so strongly as while the war continued. Their political situation being changed, they might very well think it advisable to assume a higher tone, and to impress on the Cherokees the same respect for Congress, which was before felt for the King of Great Britain. This may account for the language of

the treaty of Hopewell. There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them.

The treaty is introduced with the declaration, that "The Commissioners Plenipotentiary of the United States give peace to all the Cherokees, and receive them into the favour and protection of the United States of America, on the following conditions:"—

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask, further: Did the Cherokees come to the seat of the American Government to solicit peace; or, did the American Commissioners go to them to obtain it? The treaty was made at Hopewell, not at New-York. The word "give," then, has no real importance attached to it.

The first and second article stipulate for the mutual restoration of prisoners, and of course equal.

The third article acknowledges the Cherokees

to be under the protection of the United States of America, and of no other power.

This stipulation is found in the Indian treaties with Great Britain; and may probably be found in those with other European Powers. Its origin may be traced to the nature of their connexion with those Powers; and its true meaning is discerned in their relative situation.

The general law of European sovereigns, respecting their claims in America, limited the intercourse of Indians, in a great degree, to the particular potentate, whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was, that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of still more importance, the strong hand of Government was interposed to restrain the licentious and disorderly from intruding into their country, from encroachments on their lands, and from those acts of violence which are often attended by reciprocal murder. The Indians perceived in this protection only what was beneficial to themselves—an engagement to punish aggressors on them. It involved

practically no claim to their lands, no dominion over their persons. It merely bound the nation to the British crown, as a dependent ally, claiming the protection of a powerful friend and neighbour, and receiving the advantages of that protection, without involving a surrender of their national character.

This is the true meaning of the stipulation; and is undoubtedly the sense in which it was made. Neither the British Government nor the Cherokees ever understood it otherwise.

The same stipulation entered into with the United States, is undoubtedly to be construed in the same manner. They receive the Cherokee nation into their favour and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power. Protection does not imply the destruction of the protected. The manner in which this stipulation was understood by the American Government, is explained by the language and acts of our first President.

The *fourth* article draws the boundary between the Indians and the citizens of the United States. But, in describing this boundary, the term "allotted," and the term "hunting-ground" are used.

Is it reasonable to suppose, that the Indians,

who could not write, and most probably could not read, who certainly were not critical judges of our language, should distinguish the word "allotted" from the words "marked out?" The actual subject of contract was the dividing line between the two nations, and their attention may very well be supposed to have been confined to that subject. When, in fact, they were ceding lands to the United States, and describing the extent of their cession, it may very well be supposed that they might not understand the term employed, as indicating, that instead of granting they were receiving lands. If the term would admit of no other signification, which is not conceded, its being understood is so apparent, and results so necessarily from the whole transaction, that it must, we think, be taken in the sense in which it was most obviously used.

So with respect to the words "hunting-grounds." Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not, however, be supposed, that any intention existed of restricting the full use of the lands they reserved.

To the United States, it could be a matter of no concern, whether their whole territory was devoted to hunting-grounds, or whether an

occasional village, an occasional corn-field, interrupted, and gave some variety to the scene.

These terms had been used in their treaties with Great Britain, and had never been misunderstood. They had never been supposed to imply a right in the British Government to take their lands, or to interfere with their internal government.

The *fifth* article withdraws the protection of the United States from any citizen who has settled, or shall settle, on the lands allotted to the Indians, for their hunting-grounds, and stipulates that if he shall not remove within six months, the Indians may punish him.

The *sixth* and *seventh* articles stipulate for the punishment of the citizens of either country, who may commit offences on or against the citizens of the other. The only inference to be drawn from them is, that the United States considered the Cherokees as a nation.

The *ninth* article is in these words: "For the benefit and comfort of the Indians, and for the prevention of injuries and oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs as they think proper."

To construe the expression "managing all their affairs," into a surrender of self-government, would be, we think, a perversion of their necessary meaning, and a departure from the construction which has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave, made it desirable that Congress should possess it. The Commissioners brought forward the claim, with the profession that their motive was "the benefit and comfort of the Indians, and the prevention of injuries and oppressions." This may be true, as respects the regulation of their trade, but cannot be true as respects the management of all their affairs. The most important of these is the cession of their lands, and security against intruders on them. Is it credible that they could have considered themselves as surrendering to the United States the right to dictate their future cessions, and the terms on which they should be made? or to compel their submission to the violence of disorderly and licentious intruders? It is equally inconceivable that they could have supposed themselves, by a phrase thus slipped into an article, on another and most interesting subject, to have divested themselves of the right of self-government on subjects not connected with trade. Such a measure could not be "for

their benefit and comfort," or for "the prevention of injuries and oppression." Such a construction would be inconsistent with the spirit of this and of all subsequent treaties; especially of those articles which recognize the right of the Cherokees to declare hostilities, and to make war. It would convert a treaty of peace covertly into an act, annihilating the political existence of one of the parties. Had such a result been intended, it would have been openly avowed.

This treaty contains a few terms capable of being used in a sense which could not have been intended at the time, and which is consistent with the practical construction which has always been put upon them; but its essential articles treat the Cherokees as a nation capable of maintaining the relations of peace and war; and ascertain the boundaries between them and the United States.

The treaty of Hopewell seems not to have established a solid peace. To accommodate the differences still existing between the State of Georgia and the Cherokee nation, the treaty of Holston was negotiated, in July, 1791. The existing Constitution of the United States had been then adopted, and the Government, having more intrinsic capacity to enforce its just claims, was perhaps less mindful of high sounding

expressions denoting superiority. We hear no more of *giving* peace to the Cherokees. The mutual desire of establishing permanent peace and friendship, and of removing all causes of war, is honestly avowed, and, in pursuance of this desire, the first article declares, that there shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the Cherokee nation.

The *second* article repeats the important acknowledgment, that the Cherokee nation is under the protection of the United States of America, and no other sovereign whatsoever.

The meaning of this has been already explained. The Indian nations were, from their situation, necessarily dependent on some foreign potentate for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That Power was naturally termed their protector. They had been formerly under the protection of Great Britain; but the extinguishment of the British power in their neighbourhood, and the establishment of that of the United States in its place, led naturally to the declaration on the part of the Cherokees, that they were under the protection of the United Sates, and of no other

Power. They assumed the relation with the United States which had before subsisted with Great Britain.

This relation was that of a nation claiming and receiving the protection of one more powerful; not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.

The *third* article contains a perfectly equal stipulation for the surrender of prisoners.

The *fourth* article declares, that "the boundary between the United States and the Cherokee nation shall be as follows: — Beginning," &c. We hear no more of "allotments," or of "hunting-grounds." A boundary is described, between nation and nation, by mutual consent. The national character of each, the ability of each to establish this boundary, is acknowledged by the other. To preclude for ever all disputes, it is agreed that it shall be plainly marked by commissioners, to be appointed by each party; and, in order to extinguish for ever all claim of the Cherokees to the ceded lands, an additional consideration is to be paid by the United States. For this additional consideration the Cherokees release all right to the ceded land, for ever.

By the *fifth* article, the Cherokees allow the United States a road through their country and

the navigation of the Tennessee river. The acceptance of those cessions is an acknowledgment of the right of the Cherokees to make or withhold them.

By the *sixth* article it is agreed, on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade. No claim is made to the "management of all their affairs." The stipulation has already been explained. The observation may be repeated, that the stipulation is itself an admission of their right to make or refuse it.

By the *seventh* article, the United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.

The *eighth* article relinquishes to the Cherokees any citizens of the United States who may settle on their lands; and the *ninth* forbids any citizen of the United States to hunt on their lands, or to enter their country without a passport.

The remaining articles are equal, and contain stipulations which would be made only with a nation admitted to be capable of governing itself.

This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self-government; thus guaranteeing their lands; assuming the duty of protection, and of course pledging the faith of the United States

for that protection; has been frequently renewed, and is now in full force.

To the general pledge of protection have been added several specific pledges, deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders.

From the commencement of our Government, Congress passed acts to regulate the trade and intercourse with the Indians which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within these boundaries, which is not only acknowledged, but guaranteed by the United States.

In 1819, Congress passed an act for promoting those humane designs of civilizing the neighbouring Indians which had long been cherished by the Executive. It enacts, "That, for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining to the frontier settlements of the United States,

and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced, *with their own consent*, to employ capable persons, of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic; and for performing such other duties as may be enjoined, according to such instructions and rules as the President may give and prescribe for the regulation of their conduct in the discharge of their duties."

This act avowedly contemplates the preservation of the Indian nations as an object sought by the United States, and proposes to effect this object by civilizing and converting them from hunters into agriculturists. Though the Cherokees had already made considerable progress in this improvement, it cannot be doubted that the general words of the act comprehend them. Their advance in the "habits and arts of civilization," rather encouraged perseverance in the laudable exertions still farther to meliorate their condition. This act furnishes strong additional

evidence of a settled purpose to fix the Indians in their country by giving them security at home.

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

Is this the rightful exercise of power, or is it usurpation?

While these States were colonies, this power, in its utmost extent, was admitted to reside in the crown. When our Revolutionary struggle commenced, Congress was composed of an assemblage of deputies, acting under specific powers granted by the Legislatures, or conventions of the several colonies. It was a great popular movement, not perfectly organized, nor were the respective powers of those who were entrusted with the management of affairs accurately defined. The necessities of our situation produced a general conviction that those measures which concerned all, must be transacted by a body in which the representatives of all were assembled, and which could command the confidence of all; Congress, therefore, was considered as invested with all the powers of war and peace, and Congress dissolved our connexion with the mother country, and declared these United Colonies to

be independent States. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several Courts of Europe; offered to negotiate treaties with them, and did actually negotiate treaties with France. From the same necessity, and on the same principles, Congress assumed the management of Indian affairs; first in the name of these United Colonies, and afterwards in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction and with the forces of the United States, and the efforts to make peace by treaty were earnest and incessant. The Confederation found Congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as with those of Europe. Such was the state of things when the Confederation was adopted. That instrument surrendered the powers of peace and war to Congress, and prohibited them to the States, respectively, unless a State be actually invaded, "or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be

consulted." This instrument also gave the United States in Congress assembled the sole and exclusive right of "regulating the trade and managing all the affairs with the Indians, not members of any of the States: *Provided*, That the legislative power of any State within its own limits be not infringed or violated."

The ambiguous phrases which follow the grant of power to the United States, were so construed by the States of North Carolina and Georgia as to annul the power itself. The discontents and confusion resulting from these conflicting claims, produced representations to Congress, which were referred to a committee, who made their report in 1787. The report does not assent to the construction of the two States, but recommends an accommodation, by liberal cessions of territory, or by an admission on their part, of the powers claimed by Congress. The correct exposition of this article is rendered unnecessary by the adoption of our existing Constitution. That instrument confers on Congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several States, and *with the Indian tribes*. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any

restrictions on their free actions. The shackles imposed on this power, in the Confederation, are discarded.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which these European potentates imposed on themselves, as well as on the Indians. The very term " Nation," so generally applied to them, means, " a People distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and, consequently, admits their rank among those Powers who are capable of making treaties. The words " treaty" and " nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to the other

nations of the earth. They are applied to all in the same sense.

Georgia herself has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister States, and by the Government of the United States. Various acts of her Legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent; that their territory was separated from that of any State within whose chartered limits they might reside, by a boundary line, established by treaties; that, within their boundary, they possessed rights with which no State could interfere; and that the whole power, regulating the intercourse with them, was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December, 1828.

In opposition to this original right possessed by the undisputed occupants of every country, to this recognition of that right, which is evidenced by our history, in every change through which we have passed, is placed the charters granted by the monarch of a distant and distinct region, parcelling out a territory in possession of others, whom he could not remove, and did not attempt to remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the king of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterwards, that of the United States. These articles are associated with others, recognizing their title to self-government. The very fact of repeated treaties with them recognizes it: and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself

of the right of government, and ceasing to be a State. Examples of this kind are not wanting in Europe. " Tributary and feudatory States, (says Vattel,) do not thereby cease to be sovereign and independent States, so long as self-government, and sovereign and independent authority, is left to the administration of the State." At the present day, more than one State may be considered as holding its right of self-government under the guarantee and protection of one or more allies.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation is, by our constitution and laws, vested in the Government of the United States.

The act of the State of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity. Can this court revise and reverse it?

If the objection to the system of legislation lately adopted by the Legislature of Georgia, in relation to the Cherokee nation, was confined

to its extra-territorial operation, the objection, though complete, so far as it respected mere right, would give this court no power over the subject. But it goes much further. If the review which has been taken be correct, and we think it is, the acts of Georgia are repugnant to the constitution, laws, and treaties of the United States.

They interfere forcibly with the relation established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our Constitution, are committed exclusively to the Government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation, with its permission and by authority of the

President of the United States, is also a violation of the acts which authorize the Chief Magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized and forcibly carried away while under the guardianship of treaties guaranteeing the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the Chief Magistrate of the Union, those duties which the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned, under colour of a law which has been shown to be repugnant to the constitution, laws, and treaties, of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the constitution, laws, and treaties, of his country.

It is the opinion of this Court that the judg-

ment of the Superior Court for the county of Gwinnett, in the State of Georgia, condemning Samuel A. Worcester to hard labour, in the penitentiary of the State of Georgia, for four years, was pronounced by that court under colour of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

The Opinion of the Associate Judge McLEAN.*

As this case involves principles of the highest importance, and may lead to consequences which shall have an enduring influence on the institutions of this country; and as there are some points in the case on which I wish to state, distinctly, my opinion, I embrace the privilege of doing so.

With the decision just given I concur.

The plaintiff in error was indicted under a law of Georgia, "for residing in that part of the

* I regret that I have not the entire copy of the argument of Justice McLean.

Cherokee nation attached, by laws of said State, to the county of Gwinnett, without a license or permit from his Excellency the Governor of the State, or from any agent authorized by his Excellency the Governor, to grant such permit or license, and without having taken the oath to support and defend the constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof."

On this indictment the defendant was arrested, and, on being arraigned before the Supreme Court for Gwinnett county, he filed, in substance, the following plea:—

He admits that, on the 15th of July, 1831, he was, and still continued to be, a resident in the Cherokee nation, and that the crime, if any were committed, was committed at the town of New Echota, in said nation, out of the jurisdiction of the court. That he is a citizen of Vermont, and that he entered the Indian country in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it. That he was, at the time of his arrest, engaged in preaching the Gospel to the Cherokee Indians, and in translating the Sacred Scriptures into their

language, with the permission and approval of the Cherokee nation, and in accordance with the humane policy of the Government of the United States, for the improvement of the Indians.

He then states, as a bar to the prosecution, certain treaties made between the United States and the Cherokee Indians, by which the possession of the territory they now inhabit was solemnly guaranteed to them; and, also, by a certain act of Congress, passed in March, 1802, entitled, "An act to regulate trade and intercourse with the Indian tribes." He also alleges, that the subject, by the Constitution of the United States, is exclusively vested in Congress; and that the law of Georgia, being repugnant to the Constitution of the United States, to the treaties referred to, and to the act of Congress specified, is void, and cannot be enforced against him.

This plea was overruled by the court, and the defendant pleaded *not guilty.*

The jury returned a verdict of *guilty;* and the defendant was sentenced, by the court, to be kept in close custody, by the sheriff of the county, until he could be transported to the penitentiary of the State, and the keeper thereof was directed to receive him into custody, and keep him at

hard labour in the penitentiary during the term of four years.

Another individual was included in the same indictment, and joined in the plea to the jurisdiction of the court, and was also included in the sentence, but his name is not adverted to, because the principles of the case are fully presented, in the above statement.

To reverse this judgment, a writ of error was obtained, which having been returned, with the record of the proceedings, is now before this court.

[The Judge then considers whether the record which had been certified merely by the *clerk* of the court below, and not by the judge, had been duly certified, so as to bring the proceedings regularly before the court; and having determined this point in the affirmative, he comes to the question whether this is a case in which a writ of error may be issued. We give the whole of his reasoning on this point:]

By the twenty-fifth section of the Judiciary Act of 1789, it is provided, "that a final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, and the decision is against their validity; or

where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of such their validity; or where is drawn in question the construction of any clause of the constitution or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined, and reversed or affirmed, in the Supreme Court of the United States."

Doubts have been expressed whether a writ of error to a State Court is not limited to civil cases. These doubts could not have been suggested by reading the above section. Its provisions apply as well to criminal as to civil cases, where the constitution, treaties, or laws of the United States come in conflict with the laws of a State; and the latter is sustained by the decision of the court.

It has been said, that this Court can have no power to arrest the proceedings of a State tribunal, in the enforcement of the criminal laws of the State. This is undoubtedly true, so long as a State Court, in the execution of its penal laws,

shall not infringe upon the constitution of the United States, or some treaty or law of the Union.

Suppose a State should make it penal for an officer of the United States to discharge its duties within its jurisdiction: as, for instance, a land officer, an officer of the customs, or a postmaster, and punish the offender by confinement in the penitentiary; could not the Supreme Court of the United States interpose their power, and arrest or reverse the State proceedings? Cases of this kind are so palpable, that they need only to be stated, to gain the assent of every judicious mind. And would not this be an interference with the administration of the criminal laws of a State?

This Court have repeatedly decided, that they have no appellate jurisdiction in criminal cases, from the Circuit Courts of the United States: writs of error and appeals are given from those Courts only in civil cases. But, even in those Courts, where the Judges are divided on any point, in a criminal case, the point may be brought before this Court, under a general provision in cases of division of opinion.

Jurisdiction is taken in the case under consideration, exclusively, by the provisions of the twenty-fifth section of the law which has been

quoted, (the Judiciary act of 1789.) These provisions, as has been remarked, apply, indiscriminately, to criminal and civil cases, wherever a right is claimed under the constitution, treaties, or laws of the United States, and the decision by the State Court is against such right. In the present case, the decision was against the right expressly set up by the defendant, and it was made by the highest judicial tribunal of Georgia.

To give jurisdiction in such a case, this Court need look no further than to ascertain, whether the right, thus asserted, was decided against by the State Court. The case is clear of difficulty on this point.

The name of the State of Georgia is used in this case, because such was the designation given to the cause in the State Court. No one ever supposed, that the State, in its sovereign capacity in such a case, is a party to the cause. The form of the prosecution here, must be the same as it was in the State Court, but so far as the name of the State is used, it is matter of form. Under a rule of this Court, notice was given to the Governor and Attorney General of the State, because it is a part of their duty to see that the laws of the State are executed.

In prosecutions for violations of the penal laws

of the Union, the name of the United States is used in the same manner. Whether the prosecution be under a Federal or State law, the defendant has a right to question the constitutionality of the law.

Can any doubt exist as to the power of Congress to pass the law, under which jurisdiction is taken in this case? Since its passage in 1789, it has been the law of the land; and has been sanctioned by an uninterrupted course of decisions in this court, and acquiesced in by the State tribunals, with perhaps a solitary exception: and, whenever the attention of the National Legislature has been called to the subject, their sanction has been given to the law, by so large a majority as to approach almost to unanimity.

Of the policy of this act there can be as little doubt as of the right of Congress to pass it.

The Constitution of the United States was formed, not, in my opinion, as some have contended, by the people of the United States, nor, as others, by the States; but by a combined power, exercised by the people, through their delegates, limited in their sanctions to the respective States.

Had the Constitution emanated from the people, and the States been referred to, merely at

convenient districts, by which the public expression could be ascertained, the popular vote throughout the Union would have been the only rule for the adoption of the Constitution. This course was not pursued; and, in this fact, it clearly appears, that our fundamental law was not formed, exclusively, by the popular suffrage of the people.

The vote of the people was limited to the respective States in which they resided. So that it appears, there was an expression of popular suffrage and State sanction, most happily united, in the adoption of the Constitution of the Union.

Whatever differences of opinion may exist, as to the means by which the Constitution was adopted, there would seem to be no ground for any difference as to certain powers conferred by it.

Three co-ordinate branches of the Government were established; the Executive, Legislative, and Judicial. These branches are essential to the existence of any free Government, and they should possess powers, in their respective spheres, co-extensive with each other.

If the Executive have not powers which will enable him to execute the functions of his office, the system is essentially defective; as those

duties must, in such case, be discharged by one of the other branches. This would destroy that balance which is admitted to be essential to the existence of free government, by the wisest and most enlightened statesmen of the present day.

It is not less important that the legislative power should be exercised by the appropriate branch of the Government, than that the executive duties should devolve upon the proper functionary. And, *if the judicial power fall short of giving effect to the laws of the Union, the existence of the Federal Government is at an end.*

It is in vain, and worse than in vain, that the National Legislature enact laws, if those laws are to remain upon the statute book as monuments of the imbecility of the national power. It is in vain that the Executive is called to superintend the execution of the laws, if he have no power to aid in their enforcement.

Such weakness and folly are, in no degree, chargeable to the distinguished men through whose instrumentality the Constitution was formed. The powers given, it is true, are limited; and no powers, which are not expressly given, can be exercised by the Federal Government; but, where given, they are supreme. Within the sphere allotted to them, the co-ordi-

nate branches of the General Government resolve, unobstructed by any legitimate exercise of power by the State Governments. The powers exclusively given to the Federal Government are limitations upon the state authorities. But, with the exception of these limitations, the States are supreme; and their sovereignty can be no more invaded by the action of the General Government, than the action of the State Governments can arrest, or obstruct, the course of the national power.

In the second section of the third article of the Constitution, it is declared that, "the Judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made under their authority.

[Having shown that a writ of error will lie in this case, and that the record had been duly certified, the Judge proceeds next to inquire, What are the Acts of the United States which relate to the Cherokee Indians? and what are the Acts of Georgia? In answer to these questions, he refers to the various treaties entered into with the Cherokees, and to the law passed by Congress in 1802, for regulating the intercourse with the Indians; and to the recent Acts of Georgia, annexing the territory of the Indians to different counties of the State, and providing for the

punishment of Indians and others in certain cases. In conclusion, he says:]

It is apparent that these laws are repugnant to the treaties with the Cherokee Indians, which have been referred to, and to the law of 1802. *This repugnance is made so clear by an exhibition of the respective acts, that no force of demonstration can make it more palpable.*

By the treaties and laws of the United States, rights are guaranteed to the Cherokees, both as it respects their territory and internal polity. By the laws of Georgia these rights are abolished; and not only abolished, but an ignominious punishment is inflicted on the Indians, and others, for the exercise of them. The important question then arises, *Which shall stand, the laws of the United States, or the laws of Georgia?* No rule of construction, or subtilty of argument, can evade an answer to this question. The response must be, so far as the punishment of the plaintiff in error is concerned, in favour of the one or the other.

Not to feel the full weight of this momentous subject, would evince an ignorance of that high responsibility which is devolved upon this tribunal, and upon its humblest member, in giving a decision in this case.

[The Judge then proceeds to answer the question, whether the treaties and laws of the United States referred to were consistent with the usages adopted before the adoption of the Constitution. In doing this, he reviews the policy of the first settlers of this country, which he pronounces humane, peaceable, based on principles of justice, and requiring contracts for land. "The Indians," he says, "have always been admitted to possess many of the attributes of sovereignty. All the rights which belong to self-government have been recognized as vested in them. In some of the old States—Massachusetts, Connecticut, Rhode-Island, and others—where small remnants of tribes remain, surrounded by white population, and who, by their reduced numbers, had *lost the power of self-government*, the laws of the State have been extended over them," but this was merely "*for the protection of their persons and property.*"

In answer to a remark that is sometimes made, that treaties with Indians are nothing more than compacts, which cannot be considered as obligatory on the United States, from a want of power in the Indians to enter into them, the Judge observes:]

What is a treaty? The answer is, it is a compact formed between two nations or communities, having the right of self-government.

Is it essential that each party shall possess the same attributes of sovereignty, to give force to

the treaty? This will not be pretended; for, on this ground, very few valid treaties could be formed. The only requisite is, that each of the contracting parties shall possess the right of self-government, and the power to perform the stipulations of the treaty.

Under the Constitution, no State can enter into any treaty; and it is believed that, since its adoption, no State, under its own authority, has held a treaty with the Indians.

It must be admitted that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign State, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a State. In the management of their internal concerns, they are dependent on no power. They punish offences under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war, and form treaties of peace. The exercise of these, and other powers, gives to them a distinct character as a people, and constitutes them, in some respects, a State, although they may not be admitted to possess the right of soil.

By various treaties the Cherokees have placed themselves under the protection of the United

States; they have agreed to trade with no other people, nor to invoke the protection of any other sovereignty. But such engagements do not divest them of the right of self-government, nor destroy their capacity to enter into treaties or compacts.

Every State is more or less dependent on those which surround it; but, unless this dependence shall extend so far as to merge the political existence of the protected people into that of their protectors, they may still constitute a State. They may exercise the powers not relinquished, and bind themselves as a distinct and separate community.

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favour conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

The question may be asked, Is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties?

The inquiry is not, What station shall now be given to the Indian tribes in our country? but, What relation have they sustained to us, since the commencement of our Government?

We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves, and to impose obligations on us?

The President and Senate, except under the treaty-making power, cannot enter into compacts with the Indians, or with foreign nations. This power has been uniformly exercised in forming treaties with the Indians.

Nations differ from each other in condition, and that of the same nation may change by the revolutions of time, but the principles of justice are the same. They rest upon a base which will remain beyond the endurance of time.

After a lapse of more than forty years since treaties with the Indians have been solemnly

ratified by the General Government, it is too late to deny their binding force. Have the numerous treaties which have been formed with them, and the ratifications by the President and Senate, been nothing more than an idle pageantry?

By numerous treaties with the Indian tribes, we have acquired accessions of territory, of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our Government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a State, or separate community — not a foreign, but a domestic community—not as belonging to the Confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.

[To show in what light Georgia herself has considered Indian treaties, numerous references are made from the proceedings of her legislature, acknowledging their obligation; and in conclusion the Judge remarks:]

Many other references might be made to the public acts of the State of Georgia, to show, that she admitted the obligation of Indian treaties, but the above are believed to be sufficient. These acts do honour to the character of that highly respectable State.

[With respect to the contract between the United States and Georgia, Judge M. seems to think Georgia has some reason to complain that it has not been faithfully fulfilled on the part of the United States. We quote the whole of his remarks on this topic:]

Under the act of cession, the United States were bound, in good faith, to extinguish the Indian title to lands within the limits of Georgia, so soon as it could be done peaceably and on reasonable terms.

The State of Georgia has repeatedly remonstrated to the President on this subject, and called upon the Government to take the necessary steps to fulfil its engagement. She complained that, whilst the Indian title to immense tracts of country had been extinguished elsewhere,—within the limits of Georgia but little

progress had been made; and this was attributed, either to a want of effort on the part of the Federal Government, or to the effect of its policy towards the Indians. In one or more of the treaties, titles in fee simple were given to the Indians, to certain reservations of land; and this was complained of, by Georgia, as a direct infraction of the condition of the cession. It has also been asserted, that the policy of the Government, in advancing the cause of civilization among the Cherokees, and inducing them to assume the forms of a regular government and of civilized life, were calculated to increase their attachment to the soil they inhabit, and to render the purchase of their title more difficult, if not impracticable.

A full investigation of this subject may not be considered as strictly within the scope of the judicial inquiry which belongs to the present case. But, to some extent, it has a direct bearing on the question before the Court, as it tends to show how the rights and powers of Georgia were construed by her public functionaries.

By the first President of the United States, and by every succeeding one, a strong solicitude has been expressed for the civilization of the Indians. Through the agency of the Government, they have been partially induced, in some

parts of the Union, to change the hunter's state for that of the agriculturist and herdsman.

In a letter addressed by Mr. Jefferson to the Cherokees, dated 9th of January, 1809, he recommends them to adopt a regular government, that crimes might be punished and property protected. He points out the mode by which a council should be chosen, who should have power to enact laws; and he also recommended the appointment of judicial and executive agents, through whom the laws might be enforced. The agent of the Government who resided among them, was recommended to be associated with their council, that he might give the necessary advice on all subjects relating to their government.

In the treaty of 1817, the Cherokees are encouraged to adopt a regular form of government.

Since that time, a law has been passed, making an annual appropriation of the sum of ten thousand dollars, as a school fund, for the education of Indian youths, which has been distributed among the different tribes where schools had been established. Missionary labours among the Indians have also been sanctioned by the Government, by granting permits, to those who were disposed to engage in such a work, to reside in the Indian country.

That the means adopted by the General Government to reclaim the savage from his erratic life, and induce him to assume the forms of civilivation, have had a tendency to increase the attachment of the Cherokees to the country they now inhabit, is extremely probable; and that it increased the difficulty of purchasing their lands, as by act of cession the General Government agreed to do, is equally probable.

Neither Georgia, nor the United States, when the cession was made, contemplated that force should be used in the extinguishment of the Indian title; nor that it should be procured on terms that are not reasonable. But, may it not be said, with equal truth, that it was not contemplated by either party that any obstructions to the fulfilment of the compact should be allowed, much less sanctioned by the United States?

The humane policy of the Government towards these children of the wilderness must afford pleasure to every benevolent feeling; and if the efforts made have not proved as successful as was anticipated, still much has been done. Whether the advantages of this policy should not have been held out by the Government to the Cherokees within the limits of Georgia, as an inducement for them to change their residence and fix it elsewhere, rather than by such means to

increase their attachment to their present home, as has been insisted on, is a question which may be considered by another branch of the Government. Such a course might, perhaps, have secured to the Cherokee Indians all the advantages that they have realized from the parental superintendence of the Government, and have enabled it, on peaceable and reasonable terms, to comply with the act of cession.

[In allusion to the argument, that there can be no *imperium in imperio*, that the existence of an independent power within a sovereign state is an absurdity, which has been so often absurdly misapplied to the case of the Indians, Judge M. remarks:]

Much has been said against the existence of an independent power within a sovereign State; and the conclusion has been drawn, that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a State. The refutation of this argument is found in our past history.

That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance, where the State laws have been generally extended

over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently.

Has Georgia ever, before her late laws, attempted to regulate the Indian communities within her limits? It is true, New York extended her criminal laws over the remains of the tribes within that State, more for their protection than for any other purpose. These tribes were few in number, and were surrounded by a white population. But, even the State of New York has never asserted the power, it is believed, to regulate their concerns beyond the suppression of crime.

Might not the same objection to this interior independent power, have been urged, by Georgia, with as much force as at present, ever since the adoption of the Constitution? Her chartered limits, to the extent claimed, embraced a great number of different nations of Indians, all of whom were governed by their own laws, and were amenable only to them. Has not this been the condition of the Indians within Tennessee, Ohio, and other States?

The exercise of this independent power surely does not become more objectionable, as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit,

that, *so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated; but, that it must be suppressed, as soon as it shall be administered upon the enlightened principles of reason and justice?*

Are not those nations of Indians who have made some advances in civilization, better neighbours than those who are still in a savage state; and is not the principle, as to their self-government, within the jurisdiction of a State, the same?

When Georgia sanctioned the Constitution, and conferred on the National Legislature the exclusive right to regulate commerce or intercourse with the Indians, did she reserve the right to regulate intercourse with the Indians within her limits? This will not be pretended. If such had been the construction of her own powers, would they not have been exercised? Did her senators object to the numerous treaties which have been formed with the different tribes, who lived within her acknowledged boundaries? Why did she apply to the Executive of the Union, repeatedly, to have the Indian title extinguished; to establish a line between the Indians and the State, and to procure a right of way through the Indian lands?

The residence of Indians, governed by their own laws, within the limits of a State, has never

been deemed incompatible with State sovereignty, until recently. And yet this has been the condition of many distinct tribes of Indians, since the foundation of the Federal Government.

How is the question varied by the residence of the Indians in a territory of the United States? Are not the United States sovereign within their territories? And has it ever been conceived, by any one, that the Indian Governments, which exist in the territories, are incompatible with the sovereignty of the Union?

A State claims the right of sovereignty commensurate with her territory; as the United States claim it, in their proper sphere, to the extent of the federal limits. This right or power, in some cases, may be exercised, but not in others. Should a hostile force invade the country, at its most remote boundary, it would become the duty of the General Government to expel the invaders. But it would violate the solemn compacts with the Indians, without cause, to dispossess them of rights which they possess by nature, and have always exercised; and which have been uniformly acknowledged by the Federal Government.

Is it incompatible with State sovereignty to grant exclusive jurisdiction to the Federal Government over a number of acres of land, for

military purposes? Our forts and arsenals, though situated in the different States, are not within their jurisdiction.

[In concluding his opinion, Judge M. remarked:]

The plaintiff who prosecutes this writ of error, entered the Cherokee country, as it appears, with the express permission of the President, and under the protection of the treaties of the United States, and the law of 1802. He entered, not to corrupt the morals of this people, nor to profit by their substance; but to teach them, by precept and example, the christian religion. If he be unworthy of this sacred office; if he had any other object than the one professed; if he sought, by his influence, to counteract the humane policy of the Federal Government towards the Indians, and to embarrass its efforts to comply with its solemn engagement with Georgia; though his sufferings be illegal, he is not a proper object of public sympathy.

It has been shown, that the treaties and laws referred to, come within the due exercise of the constitutional powers of the Federal Government; that they remain in full force, and, consequently, must be considered as the supreme law of the land. These laws throw a shield over the Cherokee Indians. They guaranteed to them

their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces—the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them, for the exercise of those rights which have been most solemnly guaranteed to them by the national faith.

Of these enactments, however, the plaintiff in error has no right to complain, nor can he question their validity, except in so far as they affect his interests. In this view, and in this view only, has it become necessary, in the present case, to consider the repugnancy of the laws of Georgia to those of the Union.

Of the justice or policy of these laws, it is not my province to speak. Such considerations belong to the Legislature by whom they were passed. They have, no doubt, been enacted under a conviction of right, by a sovereign and independent State, and their policy may have been recommended, by a sense of wrong, under the compact. Thirty years have elapsed since the Federal Government engaged to extinguish the Indian title within the limits of Georgia. That she has strong ground of complaint, arising from this

delay, must be admitted; but such considerations are not involved in the present case: they belong to another branch of the Government. We can look only to the law, which defines our power, and marks out the path of our duty.

Under the administration of the laws of Georgia, a citizen of the United States has been deprived of his liberty; and, claiming protection under the treaties and laws of the United States, he makes the question, as he has a right to make it, whether the laws of Georgia, under which he is now suffering an ignominious punishment, are not repugnant to the Constitution of the United States, and the treaties and laws made under it. This repugnancy has been shewn; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the States in this Union, that, being repugnant to the Constitution of the United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty.

No. II.

THE following is the correspondence referred to in page 99, of this volume, between Judge Clayton, of Georgia, and Chancellor Kent, of New York. It may be observed, that the Legislature of Georgia, having assumed jurisdiction over the Cherokee country, had passed a law forbidding all persons, Cherokees and others, to work the gold mines of those territories. Under this law a Cherokee was arrested for digging gold on his own land, or the land of his tribe, and was brought before Judge Clayton for trial. The Judge, with an honesty and independence, which did him great credit, ordered the release of the prisoner, on the ground, that this law of Georgia was a violation of the Constitution and treaties of the United States, and an infringement of the rights of the Indians. This decision gave great offence to the other authorities of the State,*

* See page 98, Vol. II.

and Judge Clayton was dismissed from his office, or rather, I believe, refused a re-appointment in the election of the Legislature. The first letter, as will be seen, is a note addressed by Judge Clayton to the Editors of a Georgia newspaper:

"*Milledgeville, Nov.* 12, 1831.

"MESSRS. EDITORS,

"You will confer a favour by publishing the following letter of Chancellor Kent. In making this request, I have only to remark, that the sole consideration for making it is, to submit the testimony of one, in favour of my legal reputation, whose character as a jurist will entitle his evidence to great weight. He is justly considered the Blackstone of America, and his character as a lawyer stands as high in Europe as it does in his own country. He has never been engaged in either party or political strifes, and his whole life has been devoted to legal research. This publication is asked under not the slightest temper of complaint for my late removal from office, for I hope I shall have it in my power, at a more convenient season, to lay before my fellow-citizens, such a statement of the whole matter, as will show there is no necessity, on my part, for either ill-will or reproach.

"Respectfully yours,

"A. S. CLAYTON."

"*New York, Oct.* 13, 1831.

"DEAR SIR,

"I was favoured yesterday with your letter of the 3d instant, together with the *Southern Recorder* of Sept. 29, containing your opinion in the case of the *State of Georgia* versus *Canatoo.*

"That opinion has been read by me with great care and attention, and agreeably to your request I subjoin the conclusions, to which my own mind has arrived, in answer to the two material points in the case.

"1. It appears to me that upon the whole, the statute applies to the case. I can only judge from the extracts from it contained in your opinion. The statute asserts that the mines alluded to are *of right the property of Georgia, and it authorises the Governor to take possession of those mines, and to employ force to protect them from all further trespass.* I presume such forcible possession has been taken, and that the offence alleged against the Cherokee Indian arose, subsequently. But the statute is so exceptionable, in reference to the rights of the Cherokees to their lands, (and which include the mines therein, as well as the trees and herbage and stones thereon,) under the existing treaties with them, and in reference to the

Constitution and constitutional authority of the United States, that I agree with you, that such a statute should receive an interpretation, *if possible*, favourable to constitutional and treaty rights. If such a statute does not apply *in very terms*, to the very case of a Cherokee Indian digging in the mines, the benign intendment would be that the Legislature did not intend it, because such an intention would contravene the clear rights of the Cherokees, to the undisturbed use and enjoyment of the lands within their territory, secured to them by treaty.

"*2.* But the better way is not to rest upon any such construction, but to go at once, as you have done, to the great and grave question, which assumes the statute to have intended to deprive the Cherokees without their consent and without purchase, of the use and enjoyment, in part at least, of their lands secured to them by national treaties, and which calls into discussion the constitutional validity of the statute.

"On this point I am entirely with you, and in my opinion your argument is sound and conclusive, and you have examined the subject with candour and accuracy, and with the freedom of judgment which your station and character dictate.

"I am most entirely persuaded, that the

Cherokee title to the sole use and undisturbed enjoyment of their mines, is as entire and perfect as to any part of their lands, or as to any use of them whatever. The *occupancy* in perpetuity to them and their posterity, belongs to them of right, and the State of Georgia has no other right in respect to the Indian *property* in their lands, than the *right of pre-emption by fair purchase.*

" No other interest in the lands, as property, belongs to the State, and to take possession of the mines by force, is substituting violence for law and the obligations of treaty contract. It appears to be altogether without any foundation, to apply the common law doctrine of *waste* to the case, and I cannot but think that the Legislature of Georgia would not have passed the statute, if they had duly considered that the Indian lands have never been claimed, or the occupancy of them, in the most free and absolute manner by the Indians, questioned, either by the royal Governments before the American Revolution, or by the Union, or by any State since, except in open wars, or except the claim was founded upon fair purchase from the Indians themselves. The proceeding of Georgia in this case is an anomaly, and I think it hurts the credit of free and popular governments, and the

moral character of our country, and is in direct violation of the constitutional authority of the United States, as manifested by treaties and by statute. I cannot think that the high-spirited, free and noble race of men, who compose the citizens of Georgia, would be willing on reconsideration to do any such thing.

"Yours respectfully,

"JAMES KENT."

"*Hon.* A. S. CLAYTON."

No. III.

THE following is a curious document, published in a Georgia paper, *The Savannah Georgian*, showing briefly the way, in which the Cherokee country, so nobly conquered, and the gold mines therein, have been disposed of:—

"LAND LOTTERIES.

"We have mentioned that the lotteries are to be commenced on the 22d instant. The following, as we learn from Milledgeville, are the number of draws placed in the wheels, and the prizes to be awarded to them, viz.—

"In the Land Lottery, in which the prizes are square lots of 150 acres each; names given in, 85,000; prizes, 18,309; or about four and a half blanks to a prize.

"In the Gold Lottery, in which the prizes are square lots of 40 acres each: names given in, 133,000; prizes, 35,000; or nearly four blanks to a prize.

"The commissioners have been industrious to

prepare such a mass of tickets (which are not printed), together with the numerical books necessary, in so short a period. The wheels containing the names are of great circumference, and so weighty with the tickets, that a strong man can hardly turn them. They were manufactured in the penitentiary, and these important aids towards a speedy distribution of Cherokee territory, were constructed with the united help of two persons, whose stubborn zeal in asserting its independence, has thus made them remote agents in its dismemberment,—we mean the missionaries. Great accuracy being requisite in the registry, it will hardly be possible to draw more than 250 or 300 names per day; so that, with the latter number, it will occupy seven months before the prizes are exhausted and the lottery finished. It is proposed to draw a day alternately from the wheels of each."

It may be remarked, that some of the Southern States have been accustomed to dispose of their public lands by lottery, specifying by law the qualifications of a citizen, which would entitle him to the claim of a ticket. In this way the Cherokee lands, and the gold mines, having been duly seized upon and possessed by the State, were conferred upon the fortunate drawers of the prizes.

But the most remarkable feature of this newspaper notice, is the spirit in which it seems to glory, that the hands of the missionaries, Messrs. Worcester and Butler, were compelled to assist in the construction of the machinery, to be employed in the consummation of this violence. As the lottery-wheels were made in the penitentiary, and in that department occupied by the missionaries with others of their fellow-labourers, they could not avoid the task without a special dispensation. It was partly by their exertions, as missionaries, that the Cherokees had become so much enlightened and improved in their condition; and thus indirectly, no doubt, partly by their instrumentality, that Georgia had been disappointed in the acquisition of the Cherokee country without force. To atone for their offence, a law had been passed by the State, the operation of which, it was well understood, would throw them into the penitentiary. And while there, it would seem, their feelings were to be insulted, by being required to build the lottery-wheels, which were contrived to finish the work of despoiling those Indians, to whose welfare these men had consecrated their lives, and whose fidelity in the cause had doomed them to four years' ignominious imprisonment and hard labour. With a triumph, more becoming barbarians than

christians,—more fit for the obsequious minions of a tyrant than the citizens of a State boasting of its magnanimity and its equal rights, the Editors of this Journal, are seen to record and utter before the world their satisfaction, that these lottery-wheels "were constructed with the united help of *two persons*, whose stubborn zeal in asserting the independence of the Cherokee country, has thus made them *remote* agents in its dismemberment!!!"

This most unworthy boasting, as might have been expected, rung through the land, and challenged sentiments of universal indignation; and drew forth a certificate from the missionaries, that the superintendent of the prison had kindly regarded their feelings, and excused them from the task.

No. IV.

I DO not insert the following testimony to the character of Mr. Worcester, because I think he needs it. He has never been impeached—unless his treatment by the State of Georgia be considered of that nature. The world, however, as well as the Supreme Court of the United States, have already pronounced his justification; and he will evermore be regarded, as a magnanimous and heroic sufferer for the rights of the oppressed. But this testimony, coming as it does from his old friend and fellow-student, the Rev. Leonard Bacon, of New Haven, Connecticut, is especially pertinent and worthy of regard. It was given incidentally, as a fragment of an address, delivered at the anniversary of a Peace Society, at Hartford:—

"Samuel A. Worcester, one of the missionaries now confined in the penitentiary of the State of Georgia, is a man with whom it is my privilege to have had an intimate acquaintance.

Considering the ignominy and revilings, as well as the physical hardships which he suffers in the cause of righteousness and freedom, I feel myself bound, on every fit occasion, to offer my solemn testimony to the public in his behalf. He is not, what many who join in the anti-missionary clamour suppose him to be, an ignorant, rude, and flaming fanatic, but a man of superior native talent, delicate and honourable sensibilities, finished, liberal, and professional education, and of cool, deliberate, intelligent, yet devoted piety. I have had the happiness of seeing many admirable examples of Christian character; but a man more invariably and minutely conscientious than this man, less capable of any undue influence from the example and opinions of others, or in a higher degree exempt from every bias of selfishness and passion, I have never known. It was not an erratic genius which carried him to his work among the Indians; few men have more of the plain, practical common sense of New-England. It was not any inability to find employment in some more lucrative, and, according to this world's judgment, more honourable station; the great respectability of his connexions, as well as the vigour of his own talents, precludes such a supposition; had he given himself to science or to learning, he might have adorned a

university. It was the humble and self-denying desire of doing good, which made him a missionary. When the Government of Georgia commanded him to abandon his peaceful work, or to take the oath of allegiance as their subject, he looked to see by what authority they spoke; and, convinced that they had no just jurisdiction over his person, or over the territory on which he resided, he calmly and clearly informed them of the views on which he should act. The correspondence between him and Govenor Gilmer, on that occasion, will sufficiently shew which of the two is the most of a man; and—without designing to disparage the knightly breeding of his Excellency—I venture to add, it will show which of the two is the most truly a gentleman. Having fully stated what he should do, he quietly pursued his course in the spirit of one whom neither threats nor violence could intimidate. Like the great Apostle who asserted his privileges as a Roman citizen, he meekly insisted on his rights as an American. Like the Apostle appealing to Cæsar, he put himself under the protection of the laws and courts of the nation. Whether he was right in regarding the jurisdiction attempted to be set up over the Cherokee territory as an usurpation, and therefore refusing to take the prescribed oath of allegiance, we

have now no occasion to inquire; the most august tribunal of the nation, from which there is no appeal in this world but to violence, has decided that question."

The following is the correspondence above alluded to between the Governor of Georgia and Mr. Worcester:—

"*May* 15, 1831.

"SIR,

"It is a part of my official duty to cause all white persons residing within the territory of the State, occupied by the Cherokees, to be removed therefrom, who refuse to take the oath to support the constitution and laws of the State. Information has been received of your continued residence within that territory, without complying with the requisitions of the law, and of your claim to be exempted from its operation, on account of your holding the office of postmaster of New Echota.

"You have no doubt been informed of your dismissal from that office. That you may be under no mistake as to this matter, you are also informed, that the Government of the United States does not recognize as its agents the missionaries acting under the direction of the

American Board of Foreign Missions. Whatever may have been your conduct in opposing the humane policy of the General Government, or exciting the Indians to oppose the jurisdiction of the State, I am still desirous of giving you, and all others similarly situated, an opportunity of avoiding the punishment which will certainly follow your further residence within the State contrary to its laws. You are, therefore, advised to remove from the territory of Georgia, occupied by the Cherokees. Colonel Sanford, the commander of the Guard, will be requested to have this letter delivered to you, and to delay your arrest until you shall have had an opportunity of leaving the State.

"Very respectfully yours, &c.

"GEORGE R. GILMER."

"*New Echota, Cher. Na. June* 10, 1831.

"*To His Excellency* GEORGE R. GILMER, *Governor of the*
"*State of Georgia.*

"SIR,

"Your communication of the 15th ult. was put into my hand on the 31st, by an express from Colonel Sanford, accompanied with a notice

from him, that I should become liable to arrest, if after ten days I should still be found residing within the unsettled limits of the State.

"I am under obligation to your Excellency for the information, which I believe I am justified in deriving by inference from your letter, that it is *through your influence*, that I am about to be removed from the office of postmaster at this place; inasmuch that it gives me the satisfaction of knowing that I am not removed on the ground of any real or supposed unfaithfulness in the performance of the duties of that office.

"Your Excellency is pleased to intimate that I have been guilty of a criminal opposition to the humane policy of the General Government. I cannot suppose that your Excellency refers to those efforts for the advancement of the Indians in knowledge, and in the arts of civilized life, which the General Government has pursued ever since the days of Washington, because I am sure that no person can have so entirely misrepresented the course which I have pursued during my residence with the Cherokee people. If by the humane policy of the Government, are intended those measures which have been recently pursued for the removal of this and other tribes, and if the opposition is no more than that I have had the misfortune to differ in judgment with the

Executive of the United States, in regard to the tendency of those measures, and that I have freely expressed my opinion, I cheerfully acknowledge the fact; and can only add that this expression of opinion has been unattended with the consciousness of guilt. If any other opposition is intended, as that I have endeavoured to bias the judgment, or influence the conduct of the Indians themselves, I am constrained to deny the charge, and beg that your Excellency will not give credit to it, until it shall be sustained by evidence.

"Your Excellency is pleased further to intimate, that I have excited the Indians to oppose the jurisdiction of the State. In relation to this subject, also, permit me to say, your Excellency has been misinformed. Neither in this particular am I conscious of having influenced, or attempted to influence the Indians among whom I reside. At the same time, I am far from wishing to conceal the fact, that, in my apprehension, the circumstances in which Providence has placed me, have rendered it my duty to inquire whose is the rightful jurisdiction over the territory in which I reside; and that this inquiry has led me to a conclusion adverse to the claims of the State of Georgia. This opinion, also, has been expressed—to white men with the greatest freedom;

and to Indians, when circumstances elicited my sentiments.

"I need not, however, enlarge upon these topics. I thought it proper to notice them in a few words, because I understood your Excellency to intimate that, in these respects, I had been guilty of a criminal course of conduct. If for these things I were arraigned before a court of justice, I believe I might safely challenge my accusers to adduce proof of any thing beyond that freedom in the expression of opinions, against which, under the constitution of our country, there is no law. But as it is, the most convincing evidence of perfect innocence on these points would not screen me from the penalty of the law, which construes a mere residence here, without having taken a prescribed oath, into a high misdemeanour. On this point, therefore, I hope to be indulged in a few words in explanation of my motives.

"After the expression of my sentiments, which I have already made, your Excellency cannot fail to perceive, that I could not conscientiously take the oath which the law requires. That oath implies an acknowledgment of myself as a citizen of the State of Georgia, which might be innocent enough for one who believes himself to be such, but must be perjury in one who is of the opposite

opinion. I may add, that such a course, even if it were innocent of itself, would in the present state of feeling among the Indians, greatly impair, or entirely destroy my usefulness as a minister of the Gospel among them. It were better, in my judgment, entirely to abandon my work, than so to arm the prejudices of the whole people against me.

"Shall I then abandon the work in which I have engaged? Your Excellency is already acquainted, in general, with the nature of my object, and my employment, which consist in preaching the Gospel, and making known the word of God among the Cherokee people. As to the means used for this end, aside from the regular preaching of the word, I have had the honour to commence the work of publishing portions of the Holy Scriptures, and other religious books, in the language of this people. I have the pleasure of sending to your Excellency a copy of the Gospel of Matthew, of a hymn-book, and of a small tract consisting chiefly of extracts from Scripture, which, with the aid of an interpreter, I have been enabled to prepare and publish; and also of another tract, which, with my assistant, I have translated for the United Brethren's Mission. The tract of Scripture extracts has been published since my trial and

acquital by the Superior Court. This work it would be impossible for me to prosecute at any other place than this, not only on account of the location of the Cherokee press, but because Mr. Boudinott, whose editorial labours require his residence at this place, is the only translator whom I could procure, and who is competent to the task. My own view of duty is, that I ought to remain, and quietly pursue my labours for the spiritual welfare of the Cherokee people, until I am forcibly removed. If I am correct in the apprehension that the State of Georgia has no rightful jurisdiction over the territory where I reside, then it follows that I am under no moral obligation to remove, in compliance with her enactments; and if I suffer in consequence of continuing to preach the Gospel and diffuse the written word of God among this people, I trust that I shall be sustained by a conscience void of offence, and by the anticipation of a righteous decision at that tribunal from which there is no appeal.

"Your Excellency will accept the assurance of my sincere respect.

"S. A. WORCESTER."

As to Governor Gilmer's statement: "that the Government of the United States does not

recognize as its agents the missionaries, &c." and as to the dismissal of Mr. Worcester from the office of postmaster—it may be observed, that the latter transaction appears to have been done by an understanding between the Government of Georgia, and the General Government at Washington, in order to remove every obstacle in the way of getting rid of the missionaries.

It is true the missionaries were not agents of Government, in the fullest sense. Yet the Missionary Society had been formally admitted and recognized, as a coadjutor of the Government in civilizing the Indians; and the missionaries have been *instructed* from the Government in these matters, have been intrusted with important charges from that authority, and required and accustomed to make report of the fulfilment of their duties, so far as they related to the civil interests of the Indians. How far Mr. Worcester, personally, had been thus connected, I am unable to say. I speak of the general fact. He of course had his *permission*, and I can hardly doubt, that he had in some sense and for specific purposes a *commission* from the General Government—as this has been the general custom. It having been always understood, that the National Government alone had authority over the Indians and their territories, so far as

was necessary for their protection, they have not only *instructed* the missionaries for certain purposes, but they have in some cases contributed towards their support. A missionary could never set foot upon Indian ground, to abide and labour there, without a connexion with the Government.

Indeed, a reference to the language of Chief Justice *Marshall* will distinctly shew, that such a connexion did exist in this particular case:—

"The forcible seizure and abduction of the plaintiff in error, who was residing in the nation with its permission, *and by authority of the President of the United States*, is also a violation of the acts, which authorize the Chief Magistrate to exercise this authority." So also the language of Judge *M'Lean.*

No. V.

I AM happy to be able to record, in the conclusion of my task, that the State of Georgia has had so much regard to herself and so much respect for the opinion of the world, as to have repealed the law, under which the missionaries were convicted and imprisoned. It would seem, however, that this act was not accompanied by any concession, direct or indirect, to the judgment of the United States' Court; nor that the law was improper in itself; but that it was repealed, as being no longer necessary. Nor was it accompanied by any act, affecting the confinement of the missionaries. So far as the repeal was concerned, the original sentence of these men still held them to their doom. The code of legislation applied to the Cherokees and their country remains the same, and so far as appears, is still intended to be enforced. The repeal of this law, however, and the subsequent release of the missionaries for reasons that will appear in the following pages, makes an evasion of the decision

of the National Court, inasmuch as that decree respected only the missionaries and the particular statute, under which they were convicted. There is therefore no longer a controversy, *in fact*, between the Supreme Court and Georgia, except that the *contempt* abides. It is true, that the *opinion* of the Court has pronounced the *entire* legislation of Georgia over the Cherokees *unconstitutional;* but their *decree* respected only Mr. Worcester. Will the Cherokees make a new case? or must they be absolutely *worried* into submission? If they are sacrificed, it may possibly prevent a conflict between the General Government and Georgia, and remove the liability of an impeachment of the Chief Magistrate of the nation.

No. VI.

It will appear by the following documents, that the missionaries have been released, and returned to their labours among the Indians, after a confinement of one year and four months:—

"*Penitentiary, Milledgeville, Jan.* 8, 1833.

"Charles J. Jenkins, *Esq. Attorney-General of the State of Georgia.*

"Sir,

"In reference to a notice given to you on the 20th of November last, by our counsel, in our behalf, of our intention to move the Supreme Court of the United States, on the 2d day of February next, for further process in the case between ourselves, individually, as plaintiffs in error, and the State of Georgia, as defendant in error, we have now to inform you, that we have forwarded instruction to our counsel to forbear the intended motion, and to prosecute the case no farther.

"We are,

"Yours, respectfully,

(Signed) "S. A. Worcester,

"Elizur Butler."

" By WILSON LUMPKIN, Governor and Commander-in-Chief of the Army and Navy of Georgia, and of the Militia thereof; To Charles C. Mills, Esq., Principal Keeper of the Penitentiary.

" Whereas, at a Superior Court held in and for the county of Gwinnett, at the September term, 1831, Samuel A. Worcester and Elizur Butler, were convicted of illegal residence within the territory of this State, then inhabited almost exclusively by Cherokee Indians, and such other persons as were unfriendly to the rights and interests of the State; whereupon they were sentenced to four years confinement in the Penitentiary of this State;

" And whereas sound policy has, since the confinement of said persons, induced the constituted authorities of this State to provide by law, for the legal settlement of the unoccupied part of said territory, by a free white population; and having provided for the organization of said territory into counties of suitable form and size, for the convenience and regular administration of public justice, and the due execution of the laws of this State; and the legislature being assured, at their late session, that, under existing arrangements, which were duly going into execution,

the country will shortly contain a sufficient number of well qualified inhabitants, to carry fully into effect these several objects, did therefore repeal the law under which the said Samuel A. Worcester and Elizur Butler, were convicted and sentenced as aforesaid;

"And whereas the said Samuel A. Worcester and Elizur Butler, have made known to me, that they have instructed their counsel, William Wirt and John Sergeant, Esquires, to prosecute the case, which they had thought fit to institute before the Supreme Court of the United States, against the State of Georgia, *no further;* but have concluded '*to leave the question of their continuance in confinement to the magnanimity of the State;*'

"And moreover, taking into consideration, the earnest solicitude for the release of these individuals, which has been communicated to me, in the most friendly and respectful manner, by many of the most distinguished friends of the State, residing in various parts of the Union—amongst whom are many of those who have sustained the State and her authorities, throughout this unpleasant controversy; and also taking into view, the triumphant ground which the State finally occupies in relation to this subject, in the eyes of the nation, as has been sufficiently attested

through various channels, especially in the recent overwhelming re-election of President Jackson, the known defender of the rights of the State throughout this controversy; and now believing, as I do, that not only the rights of the State have been fully and successfully vindicated and sustained in this matter; but being assured, as I am, that the State is free from the menace of any pretended power whatever, to infringe upon her rights, or control her will in relation to this subject; and above all other considerations the magnanimity of Georgia being now appealed to; I therefore, as the organ of the State, feel bound to sustain the generous and liberal character of her people.

" Whatever may have been the errors of these individuals—whatever embarrassments and heart-burnings they may have been instrumental in creating—however mischievous they may have been, in working evil to the State, to themselves, and the still more unfortunate Cherokees—and whatever may have been the spirit which influenced them to the course they have pursued—and however obstinately they may have adhered to the counsel of their employers, aiders, and abettors, yet the present state of things is such that it is enough—that they submit the case ' to the magnanimity of the State.' They shall

therefore go free. And know ye, that for and in consideration of all the foregoing circumstances, and many more which might be enumerated, I have thought proper to remit, and do, in virtue of the power vested in me by the Constitution, hereby remit the further execution of the sentence of the Court against the said Samuel A. Worcester and Elizur Butler, and order that they may be forthwith discharged.

"In testimony whereof I have hereunto set my hand, and caused the seal of the Executive Department to be affixed, this fourteenth day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of American Independence the fifty-seventh.

"WILSON LUMPKIN."

"*By the Governor:*

"RHODOM H. GREENE, *Secretary.*"

The following document is from *The Missionary Herald, Boston,* the organ of the Society, under whose authority Messrs. Worcester and Butler were sent to the Cherokees:—

"SINCE Messrs. Worcester and Butler were confined in the penitentiary of the State of Georgia,

their circumstances and the events which have taken place with regard to them, have seldom required to be noticed in this work; but as this painful affair has now, in the providence of God, been brought to a close, it seems proper concisely to continue the history of it to the present time.

"Immediately after the decision of the Supreme Court of the United States, declaring the law of the State of Georgia, relating to white men residing in the Cherokee nation, under which the missionaries had been imprisoned, contrary to the constitution, laws, and treaties of the United States, and the proceedings of the courts of that State under that law, to be null and void, the mandate of that court, ordering all further proceedings against the missionaries for ever to cease, and them to be set at liberty, was immediately laid before the Court of Georgia, by which they had been tried and sentenced, and a motion made by the counsel for the missionaries that the court reverse its decision. But after the case had been argued at length, the motion was rejected. The court also refused to permit the motion, or its own decision upon it, or any thing by which it might appear that such a motion had ever been made, to be entered on its records. The counsel then made an affidavit, stating that

the mandate of the Supreme Court had been presented to the court in Georgia, and the motion made to reverse the decision of the latter, in obedience to the mandate. This affidavit was signed by the counsel for the missionaries, and acknowledged by the judge, and would have been used before the Supreme Court of the United States, instead of the record of the Court in Georgia, had a motion been made there for further proceedings at its present session.

" On the 4th of April last, immediately subsequent to this refusal of the court in Georgia to obey the mandate of the Supreme Court, the counsel for the prisoners presented a memorial in their behalf, to his Excellency, Wilson Lumpkin, governor of that State, showing in what manner the mandate of the Supreme Court had been rejected by the State Court, and praying him to use the executive power entrusted to him, and discharge the prisoners. To this the governor refused to give any written reply, but stated verbally that the prayer of the memorialist would not be complied with.

" In this state, so far as any legal proceedings are concerned, the case remained until the 27th of November, when Messrs. Worcester and Butler were informed that, if any motion were to be made before the Supreme Court of the United

States, for further proceedings in their case at its next approaching session, notice to that effect must be served on the Governor and Attorney-General of Georgia without delay. They had no time to deliberate or consult their patrons on the subject. Knowing, however, that, if the notice should be served, and they should afterwards decide that it was inexpedient to prosecute their case further, the notice could be withdrawn, and the process arrested; while, if they neglected to serve the notice till it should be too late, the motion in their behalf before the Supreme Court could not be sustained, however desirable it might seem, but must be deferred another year;—placed in this predicament, they decided to give notice of the intended motion, leaving the question whether that motion should be actually made, open to further consideration.

" Messrs. Worcester and Butler immediately informed the Prudential Committee of what they had done, and requested their advice on the point, whether they should prosecute their case further before the Supreme Court of the United States or not.

" Here it should be remarked that, from the time that the missionaries were first informed of the law enacted by the legislature of the State of Georgia, ordering them, on penalty of four years'

imprisonment in the penitentiary, to remove from the Cherokee nation before the 1st of March, 1831, or to take the oath of allegiance to that State, and obtain a permit from the governor to remain, they have had a constant and free interchange of views with the Committee respecting the course to be pursued by themselves; and while the Committee have forborne to direct, or even advise them, they have still expressed their views freely, relative to what was right and expedient, in these trying circumstances, and would ultimately be overruled for the greatest good of the Cherokees, and the honour of the Gospel; and have uniformly enjoined it upon the missionaries to act upon their own responsibility, as citizens, and especially as ministers of the Lord Jesus Christ. This, it is believed, they have uniformly done; and while the Committee have acted with entire unanimity, it is not known that, at any stage of this business, their judgment has differed from that of the missionaries.

"It should also be remarked, before proceeding further with this statement, that Messrs. Worcester and Butler, very soon after they were placed in the penitentiary, were visited by a number of highly respectable gentlemen, who urged them not to appeal to the Supreme Court

of the United States, but to accept of a pardon from the governor of the State, and promise not to return to the Cherokee nation—the condition on which pardon was offered them immediately after their sentence was pronounced. This they steadily refused to do, deeming it of great importance, in its bearing on their own characters and the cause in which they were engaged, to obtain the opinion of that Court whether the law of the State of Georgia, extending her jurisdiction over the Cherokee country, was or was not contrary to the constitution, laws, and treaties of the United States; and whether they had, or had not, been lawfully arrested and subjected to an ignominious punishment for disregarding that law. Among the gentlemen who repeatedly visited them on this errand, were M. Berrien, late Attorney-General of the United States, and the Rev. President Church, of the Georgia University. After the decision of the Supreme Court, given in March last, and especially after they had given notice of their intention to move the Court for further proceedings in their case, Messrs. Worcester and Butler were again urged by gentlemen who visited them, and by others who communicated their views in writing, to withdraw their suit and accept of pardon. These gentlemen resided in different parts of the Union,

and some of them had been on the side of the Cherokees and missionaries, through the whole of their unhappy controversy with the State of Georgia. But as the missionaries were at first, from their own view of their rights, confident that they had been guilty of no crime, and would not, therefore, accept a *pardon;* so now, having obtained the decision of the Supreme Court in their favour, they were still less inclined to do any thing which might imply that they had not a just claim to an unconditional discharge, without the stigma of being pardoned criminals. From time to time they submitted their case to the Prudential Committee, with the arguments which were pressed upon them from different quarters. But the Committee saw no cause for advising them to change their course.

"More recently, however, and especially subsequent to giving the notice of the intended motion in the Supreme Court, the subject was presented to the minds of the missionaries in a somewhat different aspect; which, together with the posture of our national affairs, induced them to examine the whole subject anew, and to lay the arguments in favour of withdrawing their suit, which had been suggested to them by others, or had occurred to their own minds, before the Committee, which they did in the letter from

which the subjoined paragraphs are extracted. Dr. Butler being at the time unwell, Mr. Worcester, after mentioning that they had given notice of the intended motion, with some account of the interviews which they had had with gentlemen on the subject, presents the following interrogations as containing the substance of the arguments presented by them.

"'What, then, are we to gain by the further prosecution of the case?

"'*Our personal liberty?* There is much more prospect of gaining it by yielding than by perseverance. And if not, it is not worthy of account in comparison with the interests of our country.

"'*Freedom from the stigma of being pardoned criminals?* That also is a consideration of personal feeling, not to be balanced against the public good.

"'*The maintenance of the authority of the Supreme Court?* It is argued against us that, if we yield, the authority of the court is not prostrated—only not tested; that, if it be put to the test *now*, it is almost certain to fail; that the probability of prostrating its authority is far greater than of maintaining it; that, if it were to be put to the test, it ought to be done at a more favourable time.

" '*The prevention of the violation of the public faith?* That faith, it appears to us, is already violated; and, as far as we can see, our perseverance has no tendency to restore it.

" '*The arresting of the hand of oppression?* It is already decided that such a course cannot arrest it.

" '*The privilege of preaching the Gospel to the Cherokees?* That privilege is at least as likely to be restored by our yielding as by our perseverance.

" '*The reputation of being firm and consistent men?* Firmness degenerates into obstinacy, if it continues when the prospect of good ceases; and the reputation of doing right is dearly purchased by doing wrong.

" 'Thus I have written on the question as vindicating the side of yielding. I could now shift sides and adduce arguments in favour of perseverance; but Dr. Butler and myself deem this unnecessary. We would rather lay before you, and before the Committee, such arguments as are continually urged upon us against the prosecution of our case, and elicit from you the arguments which can be adduced in favour of it. We will not conceal that we are in some doubt as to the path of duty. In regard to the past our minds are settled. But we consider the

circumstances of the case as in some important respects new, and are willing to examine the ground on which we now stand, and to recede from it, if we find it untenable.

"'We believe that we are not,—we trust that we shall not be, influenced by private considerations. We earnestly pray that we may not be. And we desire your fervent prayers and those of the Committee, that we may be guided in the path of duty.'

"In view of the foregoing considerations and some others which occurred to their minds, all tending to convince them that little good was to be hoped from further prosecution of the case; and that, as the law under which the missionaries had been imprisoned had been repealed, they were much more likely to be speedily restored to their labours among the Cherokees by withdrawing their suit, than by carrying it to the extremity, the Committee expressed to Messrs. Worcester and Butler the opinion, that it was inexpedient for them to prosecute their case further before the Supreme Court. It seemed to them also the part of Christian forbearance in the missionaries, in the present agitated state of the country, to yield rights, which, in other circumstances it might have been their duty to claim, rather than to prosecute

them tenaciously at the expense of hazarding the public interests.

"After receiving the opinion of the Committee, Messrs. Worcester and Butler in a communication, dated January 14, 1833, give the correspondence and proceedings which issued in their discharge from the penitentiary, and restored them to their families and missionary labours among the Cherokees.

"The grand motive which induced Messrs. Worcester and Butler to expose themselves to the hardship and ignominious imprisonment which they have endured, was the *good of the Cherokees.* To the promotion of Christianity and civilization among them they had consecrated their lives. It was a sacred work, to which they felt commissioned as missionaries of the Lord Jesus, and they must not hastily retire from it, through fear of what they deemed oppression and violence, when there were laws, and tribunals, and magistrates, to whom they could appeal for protection. The Apostles, it is believed, appealed in every similar case. Their yielding would have discouraged the Cherokees, by virtually saying to them that the faith of the United States, pledged to them, would be violated; and that all the provisions made for their protection in the constitution, treaties, and laws of this

Union would not be enforced; and that the missionaries did not dare to trust their own persons on these provisions.

"Besides this great motive of doing good to the Cherokees, the missionaries in disregarding the law of the State of Georgia had some reference to the securing of their own rights as citizens of the United States and ministers of the Gospel. These rights are invaluable to every man, as an individual. It may also be a duty, which a good man owes to his country and fellow-citizens, to withstand what plainly appears to him to be oppression, and give opportunity for justice to be done by the execution of wholesome laws, even though detriment should come to himself. The principle, that Christian duty requires every good man to retire before a threatened invasion of his rights, would be dangerous in such a Government as ours. Suitable regard to the authority of the United States, under whose patronage and sanction they had been sent forth, and had laboured, required them not hastily to abandon the work intrusted to them.

"They have yielded none of the principles involved in these motives for the course of conduct they have pursued. They have not yielded the point, that they had originally a right to prosecute, unmolested, their labours among the

Cherokees; that their views of the constitution, laws, and treaties of the United States, under which they acted, were correct; that they were right in appealing from the decision of the Court of Georgia to the Supreme Court; that they had a just claim to immediate and unconditional release from imprisonment, in compliance with the decision and mandate of that court; and that they might justly claim the further interposition of that court for their deliverance according to the course of law.

"Nor have they stopped short of accomplishing every object aimed at by them, which, in their view could possibly be accomplished by them, even if they should carry their suit to the utmost extremity. The law, under which their labours had been interrupted and their persons imprisoned, had been repealed, so that, by their discharge they are able, without delay or fear of further molestation, to resume their missionary labours. The Supreme Court, in giving an opinion in the case of the missionaries, have incidentally, but fully and explicitly, given an opinion respecting the meaning of the treaties and laws which have been made for protecting the rights of the Cherokees, sustaining them in all which they have claimed. Whether this unhappy people will be reinstated in these rights,

in conformity with the opinion of the court, will be matter for future history to record. The court, also, by deciding unequivocally, in the face of the country, that the missionaries, in the controversy with the State of Georgia, had right and justice on their side, and that they had been arrested and imprisoned contrary to the constitution and laws of the Union, have done all that the highest judicial tribunal in the nation could do to rescue their character from ignominy and reproach. In the present posture of our national affairs, it did not seem practicable to the missionaries, or to the Committee, to gain more. The ultimate result of this protracted and painful controversy, with prayerful and humble reliance on the wisdom of the Divine administration, must be left with HIM, on whose hands the name of Zion is engraved, and who will cause *all things to work together for good to those who love Him.*

"In closing this article, it is due in justice, and it affords great pleasure, to state that Col. Mills, the keeper of the penitentiary, continued his great and unvaried kindness to the imprisoned missionaries to the close of their confinement; and gave them every indulgence, with respect to correspondence, visits from their friends, the arrangements for their labours, opportunities

for instructing their fellow-prisoners, and other things of a similar nature, which could be expected by men in their circumstances from a Christian brother; and after their discharge he gratuitously furnished them the means of conveyance to their homes.

"From many other gentlemen of the State they have received numerous tokens of sympathy and kindness, which are duly appreciated by the missionaries and the Committee.

"It is due to Messrs. Worcester and Butler, also, to state, that in resuming their labours among the Cherokees, they do it with the confidence of the Committee in their firmness, prudence, and devotedness to the missionary work entirely unimpaired."

No. VII.

THE following is taken from the *Cherokee Phœnix*, 1832, and is an interesting document, as a specimen of the common editorial labours, conducted exclusively by Indians of the Cherokee nation:—

"OPPRESSION OF THE CHEROKEES BY ALABAMA.

"We published in our last, the substance of a bill passed at the late assembly of the Legislature of Alabama, extending the laws of the State over the Cherokee and Creek nations within her chartered limits. Hundreds of the citizens of Alabama have taken license from this law, and from a resolution adopted by the same Legislature, to intrude on the lands guaranteed by the United States to the Cherokees and Creeks by treaty. When we see these intruders swarming in, and settling the country to the annoyance of the rightful occupants of the soil, our treaties with the United States disregarded

by the General Government—our lands and property taken away without our consent—our rights and liberties invaded and disturbed by lawless intruders, and that, too, under the sanction of the General Government, to whom we were taught in earlier days to look as our protectors, we cannot refrain from expressing our indignation at the wanton cruelty and oppression exercised over us. The resolution above alluded to, is well calculated to draw the most abandoned and lawless part of the citizens of the adjoining States into the nation: it authorizes all white men to settle on the lands of the Cherokees and Creeks, without any right or power from any quarter whatever to dispossess them. From the license of this single resolution, we understand that Will's Valley is now filled up by intruders; a great many are joining their fences to those of the Cherokees, others take possession of farms which may happen to be lying some distance from the house of the owner, without asking his consent. Others have threatened to possess themselves of ferries and bridges belonging to Cherokees, besides many other depredations they commit on the property of the Indians. And all this is done, for what? It is to effect the removal of the Cherokees and Creeks from their homes to the west of the Mississippi—to satisfy the avaricious

cupidity of the States surrounding us, that the President of the United States withholds the promised protection. We shall yet, however, rely upon the General Government to protect our country from intrusion, and our rights and liberties from invasion by her own citizens, and when we appeal to that Government, we ask not a favour which may be granted or withheld, but claim a *right* to *demand* the enforcement of treaty stipulations."

Is this the language of "a distinct variety of the human race .... wild, and fierce, and irreclaimable, as the animals, their co-tenants of the forest?—who have never exhibited any just estimate of the improvements around them—nor any desire to participate in them?" The civilized world might be challenged for an exhibition, from the files of its literary records, of a more vigorous and manly composition; and no statesman, or politician, could fail to respect this dignified and resolute declaration of rights, and this temperate complaint of wrong. And yet is this the unaided expression of an Indian's heart, and the ordinary style of an Indian's hand.

No. VIII.

The following are extracts from an account given in America of the debate in Congress on Mr. Everett's motion, noticed in Chapter XII. of this volume:—

"It was curious, and rather portentous, to see the working of the moral elements of the *nation*, in its representative capacity, on this great question—all reduced to so narrow a circle, to a glance of the eye. It required but little imagination—nay, none at all—nought but the soberest, the commonest observation to read the strong and unequivocal symptoms of the scene, so rapidly, not to say, wildly enacting. Here at a glance and in an instant were to be seen the quick and fevered pulsations of the wide community, respecting the question sought on the one side to be agitated—on the other to be avoided. The quick and fiery glances of the eye, the hurried manner, the whispering groups—holding rapid converse—the earnest labours even of the *Chair* to exclude the disagreeable theme;—

all had a language in it not to be mistaken. When the *ayes* and *noes* were finally announced—101 against 93, in favour of considering Mr. Everett's motion—the buzz ceased, and the conflicting elements seemed reduced to the condition of abeyance to whatever challenge might happen to fall upon them.

"There are times, when one feels a deep and thrilling interest in passing events. There are times when a word means nothing; and then again there are times, when the same word means every thing—every thing momentous. For instance—the word *impeachment*. This same trisyllable may, under ordinary circumstances, be bandied about in every one's mouth;—it may be rung even by a noisy declaimer in a parliamentary assembly, and in menace of elevated men, and still be inoffensive, innoxious, when the consciences of all concerned are clear, and all hearts strong.

"But in the present instance there has been at least a *questionable* assumption of power. It will not be readily granted by this whole community, that the Judiciary of this nation is set up for nothing, and that the head, which controls the executive arm of the law, is at the same time a Court to determine the law—to pronounce unconstitutional statutes and ordinances,

which have been in force for generations — to suspend their operation, and virtually to enact other regulations, and that to the derangement of customs affecting the vital interests of whole communities. The plea of conscience, as controlled by opinion, can never be admitted in vindication of such a course. For the only conscience, allowed to an executive officer of Government, or by which he is bound in the discharge of his duty, is to maintain the law. No matter what his private opinion may be; he must either do his duty, as prescribed—or vacate his place. Admitting a long-established usage of State to be *unconstitutional*—still usage has given its sanction and authority; and for an executive officer to suspend that usage, at his own discretion, is enacting law *against* law—or at least against usage, which nothing but the authority of a Judiciary, in such case, ought to annul.

" How nearly within this mooted case comes the current treatment of our Government towards the Indians, in withdrawing from them the protection guaranteed by treaties, and for ages afforded without even a question of its propriety — is sufficiently evident. Existing covenants and hitherto unbroken usage are known to be set aside;—and the machinery necessary

for the keeping those covenants, and created for that very purpose—has been withdrawn. And all this without consulting the Judiciary—without giving that sanctuary of the Government time to expound the oracles committed to its trust. The Judiciary is forestalled and precluded. Here, indeed, is made a very grave question. The conflicting interests on the one side, and the lovers and advocates of good faith on the other; the bold measures, to which we allude, deciding questions, which have been esteemed the sacred trust of the Judiciary;—such interests, and such sympathies, and such proceedings, all coming together—meeting at a single point, after having been for months and years collecting their forces, might well be expected to light up a blaze at the moment of contact.

"The advocate of Indian rights (Mr. Everett) being admitted to speak, unfolds the simple history, appertaining to the question—draws the line with unerring hand and with the light of a sun-beam, between executive and judicial prerogative; and then, when every ear is attent, and every pulse beats high with feeling, there drops *incidentally—only* incidentally—from his lips,—though in a connexion, the bearings of which are not misunderstood,—the word:—*Impeachment.* It is he who speaks, his known circumspection,

the time, the circumstance, the question, and the relations of the question—which give significancy and importance to the word. And I dare to say, that no single word was ever uttered in that hall of such mighty and portentous import. It came upon the deep feeling of the rapt listeners, like the voice which rends the summer stormy cloud. The murmurs of discontent which ran through the hall, and the startled apprehensions of those who felt there was too much truth in the story to be so plain — told unequivocally what fearful elements that single word embodied in such connexion.

"Doubtless the supposed errors have been carried too far to be *conveniently* disposed of. Will the aggressors on the sanctity of public covenants, and on the holier elements of the Constitution—*tread back?* There is no hope of such a result. Will the people endure the violence done to their faith, and to the sacred charter of their dearest institutions? That can hardly be expected. Evidently, there is but one step more between the present and the crisis—and that crisis is the expected decision of the Supreme Court. By that time, it is devoutly hoped, that sobriety will have chastened intemperate passion; that those who have exceeded propriety will halt; that the rest will forgive;

and that all will bow in submission to the supremacy of law."

The decision of the Court here anticipated, makes a part of this Appendix; but it has not been respected; it has not quieted the elements of agitation. It lies in abeyance to the occurrences of future history.

THE END.

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